THE COMMON WEALTH OF *ENGLAND*

BY

The Honourable Sir *Tho; Smith* Knight.

Newly Corrected & Amended.

LONDON

Printed by W. S. for Iohn Smethwicke, *& are to be sold at his Shop in S.* Dunstanes *Church yard, under the Dyall.*

THE COMMON-WEALTH OF ENGLAND.

And the manner and Gouernement thereof.

COMPILED BY THE Honorable Sir THOMAS SMITH, Knight, *Doctour of both Lawes, and one of the principall Secretaries vnto the two most worthy Princes, King* EDWARD, *and Queene* ELIZABETH.

With new Additions of the chiefe Courts in ENGLAND, and the Offices thereof by the said *Author*.

LONDON.
Printed by *Will. Stansby* for *I. Smethwicke*, and are to be sold at his shop in Saint *Dunstanes* Church-yard.
1635.

To the Reader.

TO conceale the graces inſpired by God, or the gifts ingrafted by nature, or the vertues atchieued vnto our ſelues by induſtry, in all ages, and of all wiſemen, was accounted vndutifullneſſe, vnkindneſſe, and impiety vnto that Common-wealth, in which, and vnto the which we are both bred and borne: but to ſuppreſſe the worthy workes of any Authour, may iuſtly bee iudged not onely iniurie to the perſon, but euen enuy at the whole world. Wherefore, chancing vpon this ſhort Diſcourſe compiled by the Honourable Knight Sir *Thomas Smith*, and conſidering that the ſame could not but bee a great light to the ignorant, and no leſſe delight vnto the learned in the Lawes

and policy of ſundry Regiments. I thought it part of my duty, as well for the reuiuing of the fame of ſo notable a man, as for the publike imparting of ſo pithy a Treatiſe, to preſent the ſame vnto thy indifferent and diſcreet iudgement. Wherein, although the Errours and raſhneſſe of Scribes, appearing in the contrariety, and corruption of Copies, happening both by the length of time ſince the firſt making, as alſo by the often tranſcripting, might iuſtly haue beene mine excuſe, or rather diſcharge: yet weighing the authoritie of the Authour together with the grauity of the matter, I made no doubt but that the reuerence due vnto the one, and the recompence deſerued by the other, would eaſily counteruaile all faults committed by a Clarke and Writer. And whereas ſome termes or other matters may ſeeme to diſſent from the vſuall phraſe of the Common Law of this Realme: notwithſtanding, to him

that

that will consider that the profession of the maker was principally in the ciuill lawes, and therefore not to be expected as one excellent in both, and also that the finishing of this worke was in France, farre from his Library, and in an Ambassage, euen in the midst of waightie Affaires, it cannot, nor ought not without great ingratitude be displeasant, or in any sort disliking. Wherefore (gentle Reader) accept in good part my zeale, and this honorable mans trauaile, assuring thy selfe that the same framed by an expert workemaster, and forged of pure and excellent mettall, will not faile in prouing to bee a commodious instrument.

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THE MANNER OF GOVERNMENT, OR POLICIE OF THE *REALME* OF ENGLAND.

CHAP. I.

Of the diuersities of Common-wealths or Gouernments.

THey that haue written heretofore of Common-wealths, haue brought them into three most simple and speciall kinds or fashions of Gouernment. The first, where one alone doth gouerne, is called of the Greekes Μοναρχία; The second, where the smaller number, commonly called of them Ἀριστοκρατία; and the third, where the multitude doth rule, Δημοκρατία. To rule is vnderstood to haue the

Democratia. Monarchia. Aristocratia.

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THE MANNER OF GOVERNMENT, OR POLICIE OF THE *REALME* OF ENGLAND.

CHAP. I.

Of the diuerſities of Common-wealths or Gouernments.

THey that haue written heretofore of Common-wealths, haue brought them into three moſt ſimple and ſpeciall kinds or faſhions of Gouernment. The firſt, where one alone doth gouerne, is called of the Greekes Μοναρχία; The ſecond, where the ſmaller number, commonly called of them Ἀριστοκρατία; and the third, where the multitude doth rule, Δημοκρατία. To rule is vnderſtood to haue the

Democratia. Monarchia. Ariſtocratia.

higheſt and ſupreame Authoritie of commandement. That part or member of the Common-wealth is ſaid to rule, which doth controll, correct, and direct all other members of the Common-wealth. That part which doth rule, define and command according to the forme of the gouernment, is taken in euery Common-wealth to bee juſt & Law: As a rule is alway to bee vnderſtood to bee ſtraight, and to which all workes are to be conformed, and by it to be judged: I doe not meane the *Leſbians* rule, which is conformed to the ſtone: but the right rule whereby the Artificer and the Architect doe judge the ſtraightneſſe of euery mans worke: And hee to be reckoned to make his worke perfecteſt who goeth neereſt to the ſtraightneſſe.

Chap. II.

What is iuſt or Law in euery Common-wealth or Gouernment.

NOw it doth appeare, that it is profitable to euery Common-wealth

as

(as it is to euery thing generally & particularly) to be kept in her most perfect estate. Then if that part which doth beare the rule, do command that which is profitable to it, and the commandement of that part which doth rule on that sort, is to bee accepted in euery Common-wealth respectiuely to be iust (as wee haue said before) it must needs follow, that the definition which *Thrasimachus* did make, that to bee just, which is the profit of the ruling & most strong part (if it bee meant of the Citie or Common-wealth) is not so farre out of the way, if it bee ciuilly vnderstood, as *Plato* would make it. But as there is profit, and likelihood of profit, so there is right and likelihood of right. And as well may the ruling and soueraigne part command that which is not his profit, as the just man may offend (notwithstanding his just & true meaning) when he would amend that which is amisse, and helpe the Common-wealth and doe good vnto it. For in asmuch as he attempteth to doe contrary to the Law which is already put, he therefore Iust.

by the Law is iuſtly todemned, becauſe his doing is contrary to the Law and the Ordinance of that part which doth command.

CHAP. III.

Another Diuiſion of Common-wealths.

BVt this matter yet taketh another doubt: for of theſe manner of rulings by one, by the fewer part, and by the multitude or greater number, they which haue more methodically and more diſtinctly and perfitly written vpon them, doe make a ſubdiuiſion: and diuiding each into two, make the one good and iuſt, and the other euill and vniuſt: as, where one ruleth, the one they call a King, or Βασιλεὺς, the other τύραννος, a Tyrant: where the fewer number, the one they name a gouerning of the beſt men Ἀριστοκρατίαν, or *Rempublicam Optimatum*, the other of the vſurping of a few Gentlemen, or a few of the richer and ſtronger ſort, ὀλιγαρχίαν, or *Paucorum Poteſtatem*: and where the mul-

multitude doth gouerne, the one they call a Common-wealth by the generall name πολιτείαν, or the rule of the people Δημοκρατίαν, the other, the rule or the vsurping of the popular, or rascall or viler sort, becauſe they bee more in number, Δημοκρατίαν ἀπὸ τύχης.

CHAP. IV.

Examples of change in the manner of Gouernment.

IN Common-wealths which had long continuance, the diuerſities of times haue made all theſe manners of ruling or Gouernment to be ſeene: as in *Rome*, Kings, *Romulus*, *Numa*, *Seruius*, Tyrants, *Tarquinius*, *Sylla*, *Caeſar*: the rule of beſt men, as in time when the firſt Conſuls were: and the vſurping of a few, as of the Senatours after the death of *Tarquinius*, and before the ſucceſſion of the Tribunate, and manifeſtly in the *Decem-virate*, but more perniciouſly in the *Trium-virate* of *Caeſar*, *Craſ-*

Craſſus, and *Pompeius*: and afterward in the *Triam-virate* of *Octauius*, *Antonius*, and *Lepidus*: The Common-wealth and rule of the people in the repulſing of the *Decemviri*, and long after, eſpecially after the Law was made, either by *Horatius*, or (as ſome would haue it) *Hortenſius*, *quod plebs ſciuerit, id populum teneat*: And the ruling and vſurping of the popular and raſcall, as a little before *Sylla* his reigne, and a little before *Caius Cæſars* reigne. For the vſurping of the Raſcality can neuer long endure, but neceſſarily breedeth, and quickly bringeth forth a Tyrant. Of this hath *Athens*, *Siracuſe*, *Lacedemon*, and other old ancient ruling Cities had experience, and a man need not doubt but that other Common-wealths haue followed the ſame rate. For the nature of man is, neuer to ſtand ſtill in one manner of eſtate, but to grow from the leſſe to the more, and decay from the more againe to the leſſe, till it come to the fatall end and deſtruction,

on, within any turnes and turmoyles of ſickneſſe, and recouering; ſeldome ſtanding in a perfect health neither of a mans body it ſelfe, nor of the politicke body which is compact of the ſame.

CHAP. V.

Of the queſtion what is right and iuſt in a Common-wealth.

SO when the Common-wealth is euill gouerned by an euill Ruler and vniuſt (as in the three laſt named which be rather a ſickneſſe of the politick body, than perfect and good Eſtates) if the Lawes bee made, as moſt like they be alwayes, to maintaine that Eſtate: the queſtion remayneth, whether the obedience of them be iuſt, and the diſobedience wrong? the profit and conſeruation of that Eſtate, Right and Iuſtice, or the diſſolution? and whether a good and vpright man, and louer of his Country ought to maintaine and obey them, or to ſeek by all meanes to

aboliſh them? which great & haughtie courages haue often attempted: as *Dion* to riſe vp againſt *Dionyſius*; *Thraſibulus* againſt the 30. Tyrants, *Brutus* and *Caſſius* againſt *Cæſar*, which hath bin cauſe of many commotions in Common-wealths: wherof the iudgement of the common people is according to the euent and ſucceſſe of them which be learned according to the purpoſe of the doers, and the eſtate of the time then preſent. Certain it is, that it is alwayes a doubtfull and hazardous matter to meddle with the changing of Lawes and Gouernment, or to diſobey the orders of the Rule or Gouernment, which a man doth find already eſtabliſhed.

CHAP. VI.

That Common-wealths or Gouernments are not moſt commonly ſimple, but mixt.

NOw although the gouernments of Common-wealths bee thus

diuided into two, so into sixe: yet you must not take that yee shall find any Common-wealth or Gouernment simple, pure, and absolute in his sort and kind, but as Wisemen haue diuided for vnderstanding sake, and fancasied foure simple bodies which they call Elements: as Fire, Aire, Water, Earth, and in a mans Bodie foure Complexions or Temperatures, as Cholerick Sanguine, Flegmatique and Melancholick: not that yee shall find one vtterly perfect without mixtion of the other, for that Nature almost will not suffer: but vnderstanding doth discerne each nature as in his sinceritie: so seldome or neuer shall you find Common-wealths or Gouernments which are absolutely and sincerely made of any of them aboue named, but alwaies mixed with another, and hath the name of that which is more, and ouer-ruleth the other alwayes, or for the most part.

CHAP. VII.

The definition of a King and a Tyrant.

WHere one person beareth the rule, they define that to be the state of a King, who by succession or election commeth with the good will of the people to that Gouernment, and doth administer the Common-wealth by the Lawes of the same, and by equitie, and doth seeke the profit of the people as much as his owne. A Tyrant they name him, who by force commeth to the Monarchie against the will of the people, breaketh Lawes alreadie made, at his pleasure, maketh other without the aduice and consent of the people, and regardeth not the wealth of his Commons, but the aduancement of himselfe, his Faction, and Kindred. These definitions doe containe three differences: the obtaining of the authoritie, the manner of administration thereof, and the Butt o

Mark

Marke whereunto it doth tend and ſhoot. So as one may bea Tyrant by his entry and getting of the Gouernment, and a King in the adminiſtration thereof. As a man may thinke of *Octauius*, and peraduenture of *Sylla*: For they both comming by tyrannie and violence, to that ſtate, did ſeeme to trauell very much for the better order of the Common-wealth: howbeit, either of them after a diuers manner. Another may be a King by entry, and a Tyrant by adminiſtration, as *Nero*, *Domitian*, and *Commodus*: for the Empire came to them by ſucceſſion. But their adminiſtration was vtterly tyrannicall, of *Nero* after fiue yeares, of *Domitian* and *Commodus*, very ſhortly vpon their new honour. Some both in the comming to their Empire, and in the But the which they ſhoot at, bee Kings, but the manner of their ruling is tyrannicall, as many Emperours after *Cæſar* and *Octauius*, & many Popes of *Rome*. The Emperour vſeth his tyrannical power by pretence of the Ro-

Rogation or *Plebiscitum*, which *Caius Cæsar*, or *Octavius* obtained, by which all the people of *Rome* did conferre their power and authoritie vnto *Cæsar* wholly.

The Pope groundeth his from Christ (*cui omnis potestas data est in cœlo & in terra*) whose Successor he pretendeth to bee: yet the generall Councels make strife with him, to make the Popes power either *Aristocratiam*, or at the least *legitimum regnum*, and would faine bridle that *absolutam potestatem*. Some men doe iudge the same of the Kings of *France*, and certain Princes of *Italy*, and other places, because they make and abrogate Lawes and Edicts, lay on Tributes and Impositions of their owne will, or by the priuate counsell and aduice of their friends and fauourers onely, without the consent of the people. The people I call that which the word *Populus* doth signifie, the whole bodie, and the three Estates of the Common-wealth: and they blame *Lewes* the Eleuenth, for

bringing

bringing the administration Royall of *France*, from the lawfull and regulate Reigne, to the absolute and tyrannicall Power and Gouernment. Hee himselfe was wont to glory and say, hee had brought the Crowne of *France*, *hors de page*, as one would say, out of Wardship.

CHAP. VIII.

Of the absolute King.

OTher doe call that kind of administration which the *Greekes* doe call *παμβασιλείαν*, not tyranny, but the absolute power of a King, which they would pretend that euery King hath, if he would vse the same. The other they call *βασιλείαν νομικὴν*, or the Royall power Regulate by Lawes: of this I will not dispute at this time. But as such absolute administration in time of Warre, when all is in Armes, and when Lawes hold their peace, because they cannot be heard, is most necessary: so in time of

peace

peace the same is very dangerous, as well to him that doth vse it, and much more to the people vpon whom it is vsed: whereof the cause is the frailtie of mans nature, which (as *Plato* saith) cannot abide or beare long that absolute and vncontrolled authoritie, without swelling into too much pride and insolencie. And therefore the *Romanes* did wisely, who would not suffer any man to keepe the *Dictatorship* aboue six moneths, because the *Dictators* (for that time) had this absolute power, which some *Greeks* named a lawfull tyranny for a time. As I remember, *Aristotle*, (who of all Writers hath most absolutely and methodically treated of the diuision and natures of Common wealths) maketh this sort of gouernment to be one kind of Kings. But all commeth to one effect: for at the first all Kings ruled absolutely, as they who were either the Heads and most ancient of their Families, deriued out of their owne bodies, as *Adam*, *Noe*, *Abraham*, *Iacob*, *Esau*, reigning

reigning absolutely ouer their owne children & bondmen, as reason was: or else in the rude World amongst barbarous and ignorant people, some one then, whom God had endued with singular wisdome, to inuent things necessary for the nourishment and defence of the multitude, and to administer Iustice, did so farre excell other, that all the rest were but beasts in comparison of him: and for that excellency, willingly had this authoritie giuen him of the multitude, and of the Gentiles when hee was dead, and almost when hee was yet liuing, was taken for a God, of others for a Prophet. Such among the *Iewes* were *Moses*, *Iosua*, and other Iudges, as *Samuel*, &c. *Romulus*, and *Numa*, amongst the *Romanes*, *Lycurgus*, and *Solon*, and diuers others among the *Greeks*, *Zamolxis* among the *Thracians*, *Mahomet*, among the *Arabians*; And this kind of rule among the *Greeks* is called τύραννις, which of it selfe at the first was not a name odious: But because they who had such

rule

rule, at the first, did for the most part abuse the same, waxed insolent and proud, vnjust, and not regarding the Common-wealth, committed such acts as were horrible and odious: As killing men without cause, abusing their Wiues and Daughters, taking and spoyling all mens goods at their pleasures, and were not Shepheards as they ought to be, but rather Robbers and Deuourers of the people, whereof some were contemners of God, as *Dionysius*, other they liued like Deuils, and would yet be adored and accounted for Gods: as *Caius Caligula* and *Domitian*: and that kind of administration, and manner also, at the first not euill, hath taken the signification, and definition of the vice of the abusers, so that now both in Greek, Latine, and English, a Tyrant is counted he, who is an euill King, and who hath no regard to the wealth of his people, but seeketh onely to magnifie himselfe, and his, and to satisfie his vicious and cruell appetite without respect of God, of

right

right or of the Law: becauſe that for the moſt part, they which haue had that abſolute power, haue been ſuch.

CHAP. IX.

Of the name of King, and the adminiſtration of England.

THat which we cal in one ſyllable King in Engliſh, the old Engliſhmen, and the Saxons from whom our tongue is deriued, to this day call in two ſyllables, *Cyning*, which whether it commeth of *Cen* or *Ken*, which betokeneth to know and vnderſtand, or *Can*, which betokeneth to bee able, or to haue power; I cannot tell. The participle abſolute of the one wee vſe yet, as when we ſay, a cunning man, *Vir prudens aut ſciens*: the Verbe of the other, as I can doe this, *poſſum hoc facere*. By old and ancient Hiſtories that I haue read, I doe not vnderſtand that our Nation hath vſed any other generall authoritie in this Realme, neither *Ariſtocraticall*, nor

De-

nor *Democraticall*, but onely the Royall and Kingly Maiestie, which at the first was diuided into many & sundry Kings, each absolutely raigning in his Country, not vnder the subiection of other, till by fighting the one with the other, the ouercommed alwayes falling to the augmentation of the vanquisher and ouercommer: At the last the Realme of *England* grew into one Monarchie. Neither one of those Kings, neither hee who first had all, tooke any Inuestiture at the hands of the Emperour of *Rome*, or of any other superiour or forreine Prince, but held of God to himselfe, and by his Sword, his People and Crowne, acknowledging no Prince on Earth his Superiour, and so it is kept & holden at this day: Although King *Iohn* (by the Rebellion of the Nobilitie, aided with the Daulphin of *France* his power) to appease the Pope, who at that time possessing the consciences of his Subiects, was then also his enemy, and his most grieuous torment (as some Histories doe witnesse)

neſſe) did reſigne the Crowne to his Legate *Pandulphus*, and tooke it againe from him, as from the Pope, by Faith and Homage, and a certaine Tribute yeerely. But that Act being neither approued by his people, nor eſtabliſhed by Act of Parliament, was forthwith and euer ſithence taken for nothing, either to binde the King, his Succeſſors, or Subiects.

CHAP. X.

What is a Common-wealth, and the parts thereof.

TO be vnderſtood hereafter it is neceſſary yet to make a third diuiſion of the Common-wealth by the parts therof. A Common-wealth is called a ſocietie or common doing of a multitude of Freemen, collected together, and vnited by common accord and couenants among themſelues, for the conſeruation of themſelues as well in Peace as in Warre.

For

For properly an Hoast of men is not called a Cõmon wealth, but abusiuely, because they are collected but for a time, and for a fact: which done each diuideth himselfe from others as they were before. And if one man had, as some of the old *Romanes* had (if it bee true that is written) fiue thousand, or ten thousand bondmen whom hee ruled well, though they dwelled all in one Citie, or were distributed into diuers Villages, yet that were no Common-wealth: for the bondman hath no communion with his Master, the wealth of the Lord is onely sought for, and not the profit of the slaue or bondman. For, as they who write of these things haue defined, a bondman or slaue as it were (sauing life or humane reason) is but the instrument of his Lord, as the Axe, the Saw, the Chessill and Gowge is of the Carpenter. Truth it is, the Carpenter looketh diligently to saue, correct, and amend all these: but it is for his owne profit, and in consideration of himselfe, not for

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the Inſtruments ſake. And as theſe be inſtruments of the Carpenter, ſo the Plough, the Cart, the Horſe, Oxe, or Aſſe, be inſtruments of the Huſbandman: and though one Husbandman had a great number of all theſe, and looked well to them, it made no Common-wealth, nor could not be ſo called. For the priuate wealth of the Husbandman is only regarded, and there is no mutuall ſocietie or portion, nor Law, nor pleading betweene the one and the other. And (as hee ſaith) what reaſon hath the Pot to ſay to the Potter, Why madeſt thou mee thus? or why doeſt thou breake me after thou haſt made mee? Euen ſo is the bondman or ſlaue which is bought for monie, for hee is but a reaſonable and liuing inſtrument, the poſſeſſion of his Lord and Maſter, reckoned among his goods, not otherwiſe admitted to the ſocietie Ciuill or Common-wealth, but is part of the poſſeſſion and goods of his Lord. Wherefore, except there be other orders and adminiſtrations a-

mongſt

mongst the *Turkes*, if the Prince of the *Turkes* (as it is written of him) doe repute all other his bondmen and slaues (himselfe and his sonnes onely free men) a man may doubt whether his administration bee to be accounted a Common-wealth, or a Kingdome, or he rather to be reputed onely as one that hath vnder him an infinite number of slaues or bondmen, among whom there is no right, law, nor Common-wealth compact, but onely the will of the Lord and *Seignior*. Surely none of the old *Greekes* would call this fashion of Gouernment, *Κοινωνιαν*, or *Πολιτειαν*, for the reasons which I haue declared.

CHAP. XI.

The first sort, or beginning of an House or Family called οἰκονομια.

THen if this bee a Societie, and consisteth onely of freemen, and the least part thereof must bee two.

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The naturalleſt, and firſt coniunction of two, toward the making of a further ſocietie of continuance, is of the Husband and of the Wife after a diuers ſort, each hauing care of the Family, the man to get, to trauaile abroad, to defend; the Wife to ſaue that which is gotten, to tarrie at home, to diſtribute that which commeth of the Husbands labour, for the nurtriture of the Children, and Family of them both, and to keepe all at home neat and cleane. So nature hath forged each part to his office: the Man ſterne, ſtrong, bold, aduenturous, negligent of his beautie, and ſpending: The woman weake, fearfull, faire, curious of her beautie and ſauing. Either of them excelling other in wit and wiſdome, to conduct thoſe things which appertaine to their Office, and therefore where their wiſdome doth excell, therein it is reaſon that each ſhould gouerne. And without this ſocietie of man and woman the kind of man could not long endure. And to this ſocie-

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tie men are so naturally borne, that the Prince of all Philosophers, in consideration of natures, was not afraid to say, that a man by nature is rather desirous to fellow himselfe to another and so to liue in couple, then to adhere himselfe with many. Although of all things or liuing creatures, a man doth shew himselfe most politicke, yet can hee not well liue without the societie and fellowship Ciuill. *Hee that can liue alone*, saith Aristotle, *is either a wilde Beast in Mans likenesse, or else a God rather than a Man.* So then the House and Family is the first and most naturall (but priuate) apparance of one of the best kindes of a Common-wealth, that is called *Aristocratia*, where a few, and the best doe gouerne: and where not one alwayes, but sometime and in some thing another doth beare the rule. Which to maintaine for his part, God hath giuen to the man greater wit, bigger strength, and more courage, to compell the woman to obey by reason, or force: and to

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the woman beautie, faire countenance, and sweet words, to make the man obey her againe, for loue. Thus each obeyeth & commandeth other, and they two together rule the house. The House I call heere the Man, the woman, their children, their seruants bond and free, their cattell, their houshold-stuffe, & all other things, which are reckoned in their possession, so long as all these remaine together in one, yet this cannot be called *Aristocratia*, but *metaphoricè*, for it is but an house, and little sparke resembling as it were that Gouernment. *Domus, seu Familia.*

CHAP. XII.

The first and naturall beginning of a Kingdome: in Greeke βασιλεία.

BVt for so much as it is the nature of all things, to increase or decrease: this House thus increasing and multiplying by generation, so

that it cannot well be comprehended in one habitation, and the children waxing bigger, stronger, wiser and thereupon naturally desirous to rule, the Father and Mother sendeth them out into couples, as it were by prouining or propagation. And the child by marriage beginneth, as it were to roote towards the making of a new stocke, and thereupon another House or Family. So by this propagation or prouining first of one, and then of another, and so from one to another, in space of time of many Houses was made a Street or Village; of many Streets and Villages ioined together, a Citie or Borough. And when many Cities, Boroughs and Villages, were by common and mutuall consent for their conuersation ruled by that one and first Father of them all, it was called a Nation or Kingdome. And this seemeth the first and most naturall beginning and source of Cities, Townes, Nations, Kingdomes, and of all ciuill Societies. For so long as the great Grand-father was aliue and able

Prouining, or propagation is when a man layeth a branch of a Vine or Osier, or any other tree into the ground so that it taketh roote of it selfe, & may liue though it be cut cleane from the first roote or stocke.

Pagus, Oppidum, Ciuitas, Regnum.

able to rule, it was vnnaturall for any of his Sonnes or Of-spring, to striue with him for the superioritie, or to go about to gouerne, or any wise to dishonour him, from whom he had receiued life and being. And therefore such a one doth beare the first and natural example of an absolute, and perfect King. For hee loued them as his owne Children and Nephewes, cared for them as members of his owne body, prouiding for them as one hauing by long time more experience than any one, or all of them. They againe honoured him as their Father of whose bodie they came, obeyed him for his great wisdome and forecast, went to him in doubtfull cases, as to an Oracle of God, feared his curse and malediction as proceeding from Gods owne mouth. Hee againe vsed nouriture: For, each paine put vpon them, he esteemed as laid vpon himselfe.

CHAP. XIII.

The first and naturall beginning of the rule of a few of the best men, called in Greeke Aristocratia.

BVt when that great Grand-father was dead, the sonnes of him, and brethren amongst themselues, not hauing that reuerence to any, nor confidence of wisedome in any one of them, nor that trust the one to the other, betweene whom (as many times it fareth with Brethren) some strifes & brawlings had before arisen: To defend themselues yet from them which were Welch and Strangers; necessarily agreed among themselues to consult in common, and to beare rule for a time in order, now one, and now another: so that no one might beare alwayes the rule, nor any one bee neglected. And by this meanes, if any one failed during his yeare or time by ignorance, the next

next (being either wife of himſelfe, or elſe by his brothers errour and fault) amended it. And in the meane while, at diuers and moſt times when vrgent neceſſitie did occure, they conſulted all thoſe heads of Families together within themſelues, how to demeane and order their matters beſt for the conſeruation of themſelues, and each of their Families generally and particularly. Thus a few being Heads, and the chiefe of their Families, equall in Birth and Nobilitie, and not much different in riches, gouerned their owne Houſes, and the deſcendants of them particularly, and conſulted in common vpon publike cauſes, agreeing alſo vpon certaine Lawes & Orders to be kept amongſt them. So the beſt, chiefeſt, and ſageſt did rule, and the other part had no cauſe to ſtriue with them, nor had no cauſe nor apparance to compare with any of them, neither for age nor diſcretion, nor for Riches, or Nobilitie. The Rulers ſought each to keepe and maintaine their Poſteritie, as their

Sonnes and Nephewes, and such as should succeed them, and carry their names when they were dead, and so render them being mortall by nature, immortall by their fame and succession of Posteritie: hauing most earnest care to maintaine still this their coozenage and common Family, as well against forreine and barbarous Nations, which were not of their Progenie, Tongue, or Religion, as against wild and sauage Beasts. This seemeth the naturall course and beginning, or Image of that rule of the fewer number, which is called of the Greekes *Aristocratia*, and of the Latines, *Optimatum Respublica*.

CHAP. XIV.

The first originall, or beginning of the rule of the multitude called Politeia or Democratia.

NOw, as time bringeth an end of all things, these Brethren being

all dead, and their Off-spring increasing daily to a great multitude, and the reuerence due to the olde Fathers in such and so great number of equals failing, by reason of the death or doting of the Elders: each owing their merit of education apart to their Fathers and Grand-fathers, and so many arising, & such equalities among them, it was not possible that they should be content to be gouerned by a few. For two things being such, as for the which men in societie and league most striue, that is, honour and profit, no man of free courage can bee contented to bee neglected therein, so that they were faine of necessitie to come to that, that the more part should beare the price away in election of Magistrates and Rulers. So that either by course or by lot, each man in turne might be receiued to beare rule, and haue his part of the honour (and (if any were) of the profit which came by administration of the Common-wealth. For whosoeuer came of that olde great Grand-

fathers race, hee accounted himselfe as good of birth as any other. For seruice to the Common-wealth, all, or such a number had done it, as they could not be accounted few. And if a few would take vpon them to vsurpe ouer the rest, the rest conspiring together would soone bee Masters of them, and ruinate them wholly. Whereupon necessarily it came to passe, that the Common-wealth must turne and alter as before from one to a few, so now from a few to many and the most part, each of these yet willing to saue the politick body, to conserue the authoritie of their Nation, to defend themselues against all other, their strife being onely for Empire and rule; and who should doe best for the Common-wealth, whereof they should haue experience made by bearing Office and being Magistrates. This I take for the first and naturall beginning of the rule of the multitude; which the Greeks called *Democratia*; the Latines, some *Respublica*, by the ge-

nerall

nerall name, some *Populi poteſtas*, some *Cenſus poteſtas*, I cannot tell how Latinely.

CHAP. XV.

That the Common-wealth or Policie, muſt be according to the nature of the people.

BY this proceſſe and diſcourſe, it doth appeare that the mutations and changes of faſhions of gouernment in Common-wealths be naturall, and doe not alwayes come of Ambition or Malice: And that according to the nature of the people, ſo the Common-wealth is to it fit and proper. And as al theſe three kinds of Common-wealths are naturall, ſo when to each partie, or eſpece and kind of the people, that is applied which beſt agreeth, like a garment to the bodie, or ſhooe to the foote, then the bodie Politicke is in quiet, and findeth eaſe, pleaſure and profit. But if a contrarie forme begiuen to a

contrarie manner of people, as when the ſhooe is too little or too great for the foote, it doth hurt and incumber the conuenient vſe therof, ſo the free people of Nature tyrannized or ruled by one againſt their wils, were hee neuer ſo good, either faile of courage and waxe ſeruile, or neuer reſt untill they either deſtroy the King & them that would ſubdue them, or bee deſtroyed themſelues. And againe, another ſort there is, which without being ruled by one Prince, but ſet at libertie, cannot tel what they ſhould doe, but either through inſolencie, pride, and idleneſſe, will fall to robberie, and all miſchiefe, and to ſcatter and diſſolue themſelues, or with fooliſh ambition and priuate ſtrife conſume one another, and bring themſelues to nothing. Of both theſe two wee haue hiſtories enough to beare witneſſe, as the Greekes, Romanes, Samnites, Danes, Vandals, and others. Yet muſt you not thinke that all Common-wealths, adminiſtrations, and rulings began on this ſort, by

Græci.
Romani.
Samnites.
Vandali.
Dani.
Norwegi.
Sueci.

by prouining or propagation, as is before written: But many times after a great battaile & long War, the Captaine who led a multitude of people gathered peraduenture of diuers Nations and Languages, liking the place which hee hath by force conquered, tarrieth there, and beginneth a Common-wealth after this manner, & for the moſt part a Kingdome. As the Gothes and Lumbards in Italy, the Frenchmen in Gaule, the Saracens in Spaine, and part of France, the Saxons in great Brittain, which is now called England: Of which, when that one and chiefe Prince is dead, the Nobler ſort conſult among themſelues, and either chuſe another Head and King, or diuide it into more Heads and Rulers, ſo did the Lumbards in Italy, and the Saxons in England: or take at the firſt a common rule and popular eſtate, as the Switzers did in their Cantons, and doe yet at this day; or elſe admit the rule of a certaine few, excluding the multitude and Communaltie,

munaltie, as the Paduans, Veronenſes, and Venetians haue accuſtomed.

CHAP. XVI.

The diuiſion of the parts and perſons of the Common-wealth.

TO make all things yet cleere before, as we ſhall goe, there ariſeth another diuiſion of the parts of the Common-wealth. For it is not enough to ſay that it conſiſteth of a multitude of Houſes and Families, which make Streets and Villages, and the multitude of Streets and Villages make Townes, and the multitude of Townes the Realme, and that Freemen be conſidered onely in this behalfe, as Subiects and Citizens of the Common-wealth, and not Bondmen, who can beare no rule nor iuriſdiction ouer Freemen, as they who be taken but as inſtruments, and the goods and poſſeſſions of others. In which conſideration alſo we doe reiect women, as thoſe whom Nature hath

hath made to keep home and to nouriſh their family and children, & not to meddle with matters abroad, nor to beare office in a Citie or Common wealth, no more than Children and Infants: except it bee in ſuch caſes as the Authoritie is annexed to the Bloud and Progenie, as the Crowne, a Duchie, or an Earledome: for there the bloud is reſpected, not the Age nor the Sex. Where, by an abſolute Queene, an abſolute Dutcheſſe or Counteſſe, thoſe I cal abſolute, which haue the name, not by being married to a King, Duke, or Earle, but by being the true, right & next Succeſſors in the dignitie, and vpon whom by right of the bloud that title is deſcended: Theſe I ſay, haue the ſame authoritie, although they be women or children in that Kingdome, Dutchie, or Earledome, as they ſhould haue had if they had beene men of full age. For the right & honour of the bloud, and the quietneſſe and ſuretie of the Realme, is more to bee conſidered, then either the tender age as yet impotent

potent to rule, or the Sexe not accuſtomed (otherwiſe) to intermeddle with publike affaires, being by common intendment vnderſtood, that ſuch Perſonages neuer doe lacke the counſell of ſuch graue and diſcreet men as bee able to ſupply all other defects. This (as I ſaid) is not enough: But the Diuiſion of theſe which bee participant of the Common-wealth, is one way of them that beare office, the other of them that beare none: The firſt are called Magiſtrates, the ſecond priuate men. Beſides, the like was among the Romans of *Patricij* and *Plebeij*, the one ſtriuing with the other a long time, the *Patricij* many yeeres excluding the *Plebes* from bearing rule, vntill at laſt all Magiſtrates were made common betweene them: yet was there another diuiſion of the Romans, into *Senators*, *Equites* and *Plebs*: the Greeks had alſo [illegible]. The French haue at this day, *les nobles & la populaire*, *or gentill homes & villaines*: wee in Eng-

England diuide our men commonly into foure ſorts, Gentlemen, Citizens, Yeomen, Artificers and Labourers: of Gentlemen, the firſt and chiefe are the King, the Prince, Dukes, Marquiſes, Earles, Viſcounts, Barons, and all theſe are called κατ' ἐξοχὴν, the Nobilitie, and all theſe are called Lords and Noblemen: next to theſe be Knights, Eſquires, and ſimple Gentlemen.

CHAP. XVII.

Of the firſt part of Gentlemen of England, *called* Nobilitas Majot.

DVkes, Marquiſes, Earles, Viſcounts, and Barons either bee created by the Prince, or come to that honour by being the eldeſt Sonnes, as higheſt and next in ſucceſſion to their Parents. For the eldeſt of Dukes Sonnes during his Fathers life, is called an Earle; an

Nobilitas maior. Eldeſt Sonnes of Dukes are not Earles by birth, but Lords, and take their place aboue Earles, and ſo are Earles eldeſt Sons Lords.

in reſpect of Barons. Eſquires of Honour or

Earles

Earles Sonne is called by the name of a Viſcount or Baron, or elſe according as the Creation is. The Creation I call the firſt donation and condition of the honour (giuen by the Prince for good ſeruice done by him, and aduancement that the Prince will beſtow vpon him) which with the title of that honor, is commonly (but not alwayes) giuen to him and to his Heires Males only: the reſt of the Sonnes of the Nobilitie, by the rigor of the Law be but Eſquires, yet in common ſpeech, all Dukes, and Marquiſes Sonnes, and the eldeſt Sonne of an Earle be called Lords. The which name commonly doth agree to none of lower degree then Barons, excepting ſuch onely, as bee thereunto by ſome ſpeciall Office called. The Baronie or degree of Lords, doth anſwer to the dignitie of the Senators of Rome, and the title of our Nobilitie to their *Patricij*: when *Patricij* did betoken *Senatores*, *aut Senatorum filios*. *Cenſus Senatorum* was in Rome, at

at diuers times diuers, and in England no man is created a Baron, except he may dispend of yeerely reuenue one thousand pounds or a thousand markes at the least: Viscounts, Earles, Marquesses, and Dukes more, according to the proportion of the degree and honour, but though by chance he or his Son haue lesse, he keepeth his degree: but if they decay by excesse, and be not able to maintaine the honour (as *Senatores Romani* were *amoti Senatu*) so sometimes they are not admitted the vpper House in the Parliament, although they keepe the name of Lord still.

CHAP. XVIII.

Of the second sort of Gentlemen, which may be called Nobilitas minor, *and first of Knights.*

NO man is a Knight by succession, no not the King or Prince. And

And the name of Prince in England κατ' ἐξοχὴν betokeneth the eldeſt Sonne or Prince of Wales: although the King himſelfe, his eldeſt Sonne, and all Dukes be called by generall name Princes. But as in France the Kings eldeſt Sonne hath the title of *Daulphin*, and he or the next Heire apparant to the Crowne is *Monſire*, ſo in England the Kings eldeſt Son is called κατ' ἐξοχὴν the Prince. Knights therefore be not borne but made, either before the battell to incourage them the more to adiuenture their liues, or after the conflict, as aduancement for their hardineſſe and manhood already ſhewed: or out of the Warre for ſome great ſeruice done, or ſome good hope through the vertues which doe appeare in them. And then are made either by the King himſelfe, or by his Commiſſion and Royall Authoritie, giuen for the ſame purpoſe, or by his Lieutenant in the Wars, who hath his Royall and abſolute power committed to him for that time. And

that

that order seemeth to answere in part to that which the Romanes called *Equites Romanos*, differing in some points, and agreeing in other, as their Common-wealth and ours doe differ and agree: for neuer in all points one Common-wealth doth agree with another, no nor long time any one with it selfe. For all changeth continually to more or lesse, and still to diuers and diuers orders, as the diuersitie of times doe present occasion, and the mutabilitie of mens wits doth inuent and assay new wayes to reforme and amend that wherein they doe find fault. *Equites Romani*, were chosen *ex censu*, that is, according to their substance and riches. So bee Knights in England most commonly, according to the yeerly reuenue of their lands, being able to maintaine that estate: yet all they that had *Equestrem censum*, *non legebantur Equites*. No more are all made Knights in England that may dispend a Knights Land or Fee, but they onely whom

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the King will ſo honour. The number of *Equites* was vncertaine, and ſo it is of Knights, at the pleaſure of of the Prince. *Equites Romani* had *Equum publicum*. The Knights of England haue not ſo but finde their owne Horſe themſelues in peace-time, and moſt vſually in Warres.

Cenſus Equeſter was among the Romanes at diuers times of diuers value: but in England whoſoeuer may diſpend of his free Lands fortie pounds ſterling of yeerely reuenue, by an old Law of England, either at the Coronation of the King, Marriage of his Daughter, or at the dubbing of the Prince or Knight, or ſome ſuch great occaſion, may be by the King compelled to take that Order and Honour, or to pay a fine, which many not ſo deſirous of Honour as of Riches, had rather diſburſe. Some, who for cauſes are not thought worthy of that Honour and yet haue abilitie, neither bee made Knights, though they would, & yet pay the fine of fortie pounds ſterling

ling at that time when this Order began, which maketh now a hundred and twentie pound of currant money of England: as I haue more at large declared in my Book of the diuersitie of Standards, or the value of Moneyes.

When the Romanes did write, *Senatus populusque Romanus*, they seemed to make but two Orders, that is, of the Senate, and of the people of Rome, and so in the name of people they contained *Equites & Plebem*: so when wee in England doe say the Lords and the Commons: the Knights, Esquires, and other Gentlemen, with Citizens, Burgesses, & Yeomen, bee accounted to make the Commons. In ordayning of Lawes, the Senate of Lords of England is in one House, where the Archbishops and Bishops also be, and the King or Queene for the time being as chiefe, the Knights and all the rest of the Gentlemen, Citizens and Burgesses, which be admitted to consult vpon the greatest affaires of the Realme,

Realme, bee in another Houſe by themſelues, and that is, called the Houſe of the Commons, as we ſhall more cleerly deſcribe when wee ſpeak of the Parliament. Wherupon this word Knight is deriued, & whether it doe betoken no more but that which *Miles* doth in Latine, which is a Souldier, might be moued as a queſtion. The word Souldier now ſeemeth rather to come of ſold and payment, and more to betoken a waged or hired man to fight, than otherwiſe, yet *Ceſar* in his Commentaries called *Soldures*, in the tongue *Gallois*, men who deuoted and ſwore themſelues in a certaine band or oath one to another, and to the Captaine; which order, if the Almaines did follow, it may be, that they who were not hired, but being of the Nation, vpon their own charges, and for their aduancement, and by ſuch common oath or band that did follow the Warres were (poſſibly) ἐξοχὴν called Knights or *Milites*, and now among the Almaines

maines ſome are called Launce-knights, or Souldiers of their band not hired, although at this day they bee for the moſt part hirelings. Or peraduenture it may bee that they which were next about the Prince, as his Guard and Seruants, picked or choſen men out of the reſt, being called in the Almaine Language *Knighten*, which is as much to ſay as Seruants: theſe men being found of good Seruice, the word afterward was taken for an Honour, and for him who maketh profeſſion of Armes. Our Language is ſo changed, that I dare make no judgement thereof. Now wee call him Knight in Engliſh, that the French calleth *Cheualier*, and the Latine *Equitem* or *Equeſtris ordinis*.

And when any man is made a Knight, he kneeling downe, is ſtrucken of the Prince, with his Sword naked, vpon the backe or ſhoulder, the Prince ſaying, *Sus* or *ſois Cheualier au nom de Dieu*, and (in times paſt) they added Saint *George*, and

at his arising the Prince saith *anaun-cer*. This is the manner of dubbing of Knights at this present, and that terme dubbing, was the old terme in this point, and not Creation. At the Coronation of a King or Queene, there be Knights of the Bath made, with long and more curious Ceremonies. Knights Bannerets are made in the Field, with the Ceremonie of cutting of the point of his Standart, and making it as it were a Banner: he being before a Batcheler Knight, is now of a higher degree, allowed to display his Armes in a Banner as Barons doe. But this order is almost growne out of vse in England. But howsoeuer one be dubbed or made a Knight, his Wife is by and by called a Ladie, as well as a Barons Wife: he himselfe is not called Lord, but hath to his name in common appellation added this syllable Sir, as if he before were named *Thomas*, *William*, *Iohn* or *Richard*, afterward hee is alwayes called Sir *Thomas*, Sir *William*, Sir *Iohn*, Sir

Ri-

Richard, and that is the terme which men giue to Knights in England. This may suffice at this time, to declare the Order of Knighthood, yet there is another Order of Knights in England, which bee called the Knights of the Garter. King *Edward* the Third after he had obtained many notable victories, King *John* of France, King *Iames* of Scotland, being both Prisoners in the Towre of London at one time, and King *Henry* of Castile the Bastard expulsed out of his Realme, and *Don Pedro* restored vnto it by the Prince of Wales, and Duke of Aquitaine called the Blacke Prince, inuented a Societie of Honour, and made a choice out of his own Realme and Dominions, and al Christendome: & the best and most excellent renowmed persons in Vertues and Honour, He did adorne with that Title to be Knights of his Order, gaue them a Garter decked with Gold, Pearle and Precious stones, with the buckle of gold, to weare daily on the left leg onely,

a Kirtle, Gowne, Cloke, Chaperon, Coller, and other Auguſt and magnificall apparell both of ſtuffe and faſhion exquiſite and heroicall, to weare at high Feaſts, as to ſo high and Princely an Order was meet: of which Order He and his Succeſſors, Kings and Queenes of England to be the Souereigne, and the reſt by certaine Statutes and Lawes among themſelues, betaken as Brethren and Fellowes in that Order, to the number of ſix and twenty. But becauſe this is rather an ornament of the Realme, than any Policie or Gouernment thereof, I leaue to ſpeake any further of it.

CHAP. XIX.

Of Eſquires.

E*Scuier* or *Eſquire* (which we call commonly Squire) is a French word, and betokeneth *Scutigerum*, or *Armigerum*, and be all thoſe

those which beare Armes (as we call them) or Armories (as they terme them in French) which to beare is a testimonie of the Nobilitie or Race from whence they doe come. These be taken for no distinct order of the Common-wealth, but doe goe with the residue of the Gentlemen: saue that (as I take it) they be those who beare Armes, Testimonies (as Plutarke said) of their Race, and therefore haue neither Creation nor dubbing: or else they were at first Colterels, or the Bearers of the Armes of Lords or Knights, and by that had their Name for a Dignitie and Honour, giuen to distinguish them from a common Souldier, called in Latine, *Gregarius Miles*.

CHAP. XX.

Of Gentlemen.

GEntlemen be those whom their Bloud and Race doth make

Noble and knowne, Εὐγενὶς in Greeke, the Latines call them all *Nobiles*, as the French *Nobles*. Εὐγένεια or *Nobilitas* in Latine is defined, honour or title giuen, for that the Anceſtors haue beene notable in riches or vertues or (in fewer words) old riches or proweſſe remayning in one ſtocke. Which if the Succeſſors doe keepe and follow, they be *verè Nobiles*, and Εὐγενὶς: if they doe not, yet the fame and wealth of their Anceſtors, ſerue to couer them ſo long as it can, as a thing once gilted though it be Copper within, till the gilt be worne away. This hath his reaſon, for the Etymologie of the name ſerued the efficacie of the word. *Gens* in Latine betokeneth the race and firname, ſo the *Romans* had *Cornelios*, *Sergios*, *Appios*, *Fabios*, *Æmilios*, *Piſones*, *Iulios*, *Brutos*, *Valerios* of which who were *Agnati*, and therefore kept the name, were alſo *Gentiles*, and remayning the memory of the glory of their Progenitours fame, were

were Gentlemen of that or that race. This matter made a great strife among the *Romans*, when those which were *noui homines*, were more allowed for their vertues new and newly showne, than the old smell of ancient race, newly defaced by the euill life of their Nephewes and Discendents, could make the others to be. Thus the *Ciceroones*, *Catones*, and *Marij* had much adoe with those Ancients, and therefore said *Iuvenal*:

Multo pater tibi sit Thersites, *dummodo tu sis,*
Æacidi similis Vulcaniaque *arma capessas:*
Quàm te Thersiti *similem præferret* Achilles.

But as other Common-wealthes were faine to doe, so must all Princes necessarily follow: that is, where vertue is, to honour it. And although vertue of ancient Race bee easier to be obtained, as well by the example

of the Progenitors, which incourageth, as alſo through habilitie of education and bringing vp, which enableth; and laſtly, the enraced loue of Tenants and Neighbours, to ſuch Noblemen & Gentlemen, of whom they hold, and by whom they doe dwell, which pricketh forward to enſue in their Fathers ſteps: So if all this doe faile (as it were great pitie it ſhould) yet ſuch is the nature of all humane things, and ſo the world is ſubiect to mutabilitie that it doth many times faile: but when it doth, the Prince and Common-wealth haue the ſame power that their Predeceſſours had, and as the Husbandman hath to plant a new tree where the old faileth, ſo hath the Prince to honour vertue where he doth finde it, to make Gentlemen, Eſquires, Knights, Barons, Earles, Marqueſſes and Dukes, where hee ſeeth vertue able to beare that honour, or merits and deſerues it, and ſo it hath alwayes beene vſed among vs. But ordinarily the King doth only make

Knights,

Knights, and create Barons or high degrees: for as for Gentlemen, they bee made good cheape in *England*. For whosoeuer studieth in the Lawes of the Realme, who studieth in the Vniuersities, who professeth liberall Sciences: & to be short, who can liue idlely, and without manuall labour, and will beare the port, charge and countenance of a Gentleman, hee shall be called Master, for that is the Title which men giue to Esquires, and other Gentlemen, and shall bee taken for a Gentleman. For true it is with vs as he said, *Tanti eris alijs quanti tibi fueris*: And (if need be) a King of Heralds shall also giue him for money Armes newly made and inuented, the title whereof shall pretend to haue beene found by the said Herald, in perusing and viewing of old Registers, where his Ancestors in times past had been recorded to beare the same. Or if hee will do it more truly, and of better faith, hee will write that for the merits of that man, and certaine qualities,

which hee doth ſee in him, and for ſundry noble Acts which hee hath performed: he by the autority which hee hath, as King of Heralds and Armes, giueth to him and his heires, theſe and theſe Armes: which being done, I thinke hee may be called a Squire, for he beareth euer after thoſe Armes. Such then are called ſometime in a ſcorne, Gentlemen of the firſt head.

CHAP. XXI.

Whether the manner of England *in making Gentlemen ſo eaſily, is to be allowed.*

A Man may make doubt and queſtion, whether this manner of making Gentlemen is to bee allowed or no, and for my part I am of that opinion, that it is not amiſſe: For firſt the Prince loſeth nothing by it, as he ſhould doe if it were in *France*: for the Yeoman or Husband man is no more ſubiect to taile or

taxe

taxe in *England*, than the Gentleman, no, in euery payment to the King, the Gentleman is more charged, which hee beareth the gladlier, and dareth not gainsay, for to saue and keep his honour and reputation. In any Shew or Muster, or other particular charge of the Towne where he is, hee must open his purse wider, and augment his portion aboue others, or else hee doth diminish his reputation. As for the in outward shew, a Gentleman (if he will be so accounted) must go like a Gentleman, a Yeoman like a Yeoman, and a Rascall like a Rascall: and if he be called to the Warres, he must and will (whatsoeuer it cost him) array himselfe, and arme him according to the vocation which he pretendeth: he must shew also a more manly courage, and tokens of better education, higher stomacke, and bountifuller liberalitie than others, and keepe about him idle Seruants, who shall doe nothing but wait vpon him. So that no man hath hurt by

it but hee himselfe, who hereby perchance will beare a bigger saile than he is able to maintaine. For as touching the policie and gouernment of the Common-wealth, it is not those that haue to doe with it, which will magnifie themselues, and goe in higher Buskins than their estate will beare, but they which are to be appointed, are persons tried and well knowne, as shall be declared hereafter.

Chap. XXII.

Of Citizens and Burgesses.

NExt Gentlemen be appointed Citizens and Burgesses, such as not only be free, and receiued as Officers within the Cities, but also bee of some substance to beare the charges. But these Citizens and Burgesses, bee to serue the Common-wealth, in their Cities & Boroughs, or in Corporate Townes where they dwell.

dwell. Generally in the Shires they be of none account, saue only in the common assembly of the Realme to make Lawes which is called the Parliament. The ancient Cities appoint foure, and each Borough two, to haue voices in it, and to giue their consent or dissent, in the name of the City or Borough for which they be appointed.

CHAP. XXIII.

Of Yeomen.

THose whom wee call Yeomen, next vnto the Nobilitie, Knights and Squires, haue the greatest charge and doings in the Common-wealth, or rather are more trauelled to serue in it than all the rest: as shall appeare hereafer. I call him a Yeoman whom our Lawes do call *Legalem hominem*, a word familiar in Writs and Enquests, which is a freeman borne English, and may dispend

ſpend of his own free Land in yeerly reuenue to the ſumme of forty ſhillings ſterling. This maketh (if the iuſt value were taken now to the proportion of monies) ſixe pound of our currant money at this preſent.

This ſort of people confeſſe themſelues to be no Gentlemen, but giue the honour to all which beare or take vpon them to be Gentlemen, and yet haue a certaine preheminence, and more eſtimation then Labourers and Artificers, and commonly liue wealthily, keepe good houſes, and doe their buſineſſe and trauel to acquire riches: theſe be (for the moſt part) Farmours vnto Gentlemen, which with grazing, frequenting of Markets, and keeping Seruants not idlely as the Gentleman doth, but ſuch as get both their owne liuing and part of their Maſters, and by theſe meanes do come to ſuch wealth, that they are able and daily doe buy the Lands of vnthriftie Gentlemen, and after ſetting their Sonnes to the

Schoole

Schoole at the Vniuerſities, to the Lawes of the Realme, or otherwiſe leauing them ſufficient Lands where on they may liue without labour, do make their ſaid Sonnes by thoſe meanes Gentlemen: Theſe bee not called Maſters, for that (as I ſaid) pertaineth to Gentlemen only. But to their ſirnames men adde Goodman: as if the ſirname bee *Luter*, *Finch*, *White*, *Browne*, they are called Goodman *Luter*, Goodman *Finch*, Goodman *White*, Goodman *Browne*, amongſt their Neighbours. I meane not in matters of importance, or in Law. But in matters of Law and for diſtinction, if one were a Knight, they would write him (for examples ſake) Sir *Iohn Finch* Knight, ſo if hee bee an Eſquire, *Iohn Finch* Eſquire or Gentleman, if he be no Gentleman, *Iohn Finch* Yeoman. For amongſt the Gentlemen they which claime no higher degree, and yet be to be exempted out of the number of the loweſt ſort thereof, bee written Eſquires.

quires. So amongst the Husbandmen Labourers, the loweſt and raſcall ſort of the people, ſuch as be exempted out of the number of the raſcalitie of the popular, be called and written Yeomen, as in the degree next vnto gentlemen. Theſe are they which old *Cato* calleth *Aratores*, and *optimos cives in Republica*, and ſuch as of whom the Writers of Common-wealths prayſe to haue many in it. *Ariſtotle* namely reciteth μοθακας μισθιακα: theſe tend their owne buſineſſe, come not to meddle in publike matters & iudgements, but when they are called, and glad when they are deliuered therof, are obedient to the Gentlemen and Rulers, and in Warre can abide trauaile and labour; as men vſed to fight for their Lords of whom they hold their Lands, for their Wiues and Children, for their Country and Nation, for prayſe and honour againſt they come home, and to haue the loue of their Lord and his children, to be continued towards them

and

and their children, which haue aduentured their children, which haue aduentured their liues for and with him and his. These are they which in the olde world gat that honour to *England*, not that either for wit, conduction, or for power they are or were to be compared to the Gentlemen, but becauſe they be ſo many in number, ſo obedient at the Lords call, ſo ſtrong of body, ſo hard to endure paine, ſo couragious to aduenture with their Lords or Captaine, going with, or before them, for elſe they be not haſtie nor neuer were, as making no profeſſion of knowledge of warre.

These were the good Archers in times paſt, and the ſtable troupe of Footmen that affraid all *France*, that would rather die all, then once abandon the Knight or Gentleman their Captaine, who at thoſe dayes commonly was their Lord, & whoſe Tenants they were, readie (beſides perpetuall ſhame) to be in danger of vndoing themſelues, and all theirs,

if

if they ſhould ſhew any ſigne of cowardiſe, or abandon the Lord, Knight or Gentleman of whom they held their liuing. And this they haue amongſt them from their forefathers, told one to another. The Gentlemen of *France*, and the Yeomen of *England*, are renowmed, becauſe in battaile of Horſemen, *France* was many times too good for vs, as wee againe alway for them on foot. And Gentlemen for the moſt part be men at Armes and Horſemen, and Yeomen commonly on foot: howſoeuer it was, yet the Gentlemen had alwayes the conduction of the Yeomen, and as their Captaines were either afoote or vpon a little Nagge with them, and the Kings of *England* in foughten battailes, remayning alwayes among the Footmen, as the *French* Kings among their Horſemen. Each Prince thereby, as a man may gheſſe, did ſhew where hee thought his ſtrength did conſiſt. What a Yeoman is I haue declared, but from whence the word is deriued

ued it is hard to say: it cannot bee thought that Yeoman should be said of a young man, for commonly wee doe not call any a Yeoman till he be married, and haue children, and as it were, haue some authoritie among his Neighbours. Yonker in Low Dutch betokeneth a meane Gentleman, or a gayfellow. Possibly our Yeomen not being so bolt as to name themselues Gentlemen, when they came home, were contents when they had heard by frequentation with Low Dutchmen, of some small Gentleman (but yet that would bee counted so) to bee called amongst them, Yonkerman, they calling so in Warres by mockage or in sport the one another, when they came home, Yonkerman, and so Yeoman: which word now signifieth among vs, a man well at ease, and hauing honestly to liue, yet not a Gentleman: whatsoeuer that word Yonkerman, youngman, or Yeoman doth more or lesse signifie to the Dutchmen:

German in the Saxon is a married man, and hereof commeth our Yeoman, for after marriage men are accounted setled members in the Commonwealth, but not before.

A Yonker commeth of yong heire which is a sonne and heire to a Gentleman, or a yong Gentleman.

CHAP.

CHAP. XXIIII.

Of the fourth sort of men which doe not rule.

THe fourth sort or classe amongst vs, is of those which the old Romans called *capite sensu proletarij* or *operarii*, day labourers, poore Husbandmen, yea, Merchants or Retailers, which haue no free Land, Copyholders, and all Artificers, as Tailers Shoomakers, Carpenters, Brickmakers, Brick-layers, Masons, &c. These haue no voice nor authoritie in our Common-wealth, and no account is made of them, but only to be ruled, and not to rule other, and yet they be not altogether neglected. For in Cities and Corporate Townes for default of Yeomen, Enquests & Iuries are impannelled of such manner of people. And in Villages they bee commonly made Church-wardens, Ale-cunners, and many times Constables, which Office toucheth more the Common-wealth, and at the first was not imployed vpon such low

low and baſe perſons. Wherefore generally to ſpeak of the Commonwealth, or Policie of *England*, it is gouerned, adminiſtred, and managed by three ſorts of perſons, the Prince, Monarch, and head Gouernour, which is called the King, or if the Crowne fall to a Woman, the Queene abſolute, as I haue heretofore ſaid: In whoſe name and by whoſe authoritie all things are adminiſtred. The Gentlemen, which be diuided into two parts, the Baronie or Eſtate of Lords containing Barons and all that be aboue the degree of a Baron, (as I haue declared before:) & thoſe which be no Lords, as Knights, Eſquires, and ſimply Gentlemen.

The third and laſt ſort of perſons, is named the Yeomanry: Each of theſe hath his part and adminiſtration in iudgements, corrections of defaults, in election of Offices in appointing and collection of Tributes and Subſidies, or in making Lawes as ſhall appeare hereafter.

THE

THE SECOND BOOKE.

CHAP. I.

The division and definition of the Lawes of this Realme in generall.

THE Lawes of *England* consist in two points, { Judgment and Practice.

In Judgment are considered the { Persons. Place. Matter, and Manner.

The persons in judgement are the { Iudges in the Courts Sergeants and Counsellors.

In

In practice are considered the { Persons and their Office.

The persons are { Protonotaries, Sollicitors, and Atturneies.

Their office is to prepare the matter, and to make it ready for the Iudges to determine.

The Protonotaries are the Clerks in the Court, which doe record the matters hanging in iudgement, and doe frame the pleading, enter the Rules and Orders of the Court, the Verdicts and Iudgements giuen in the same.

Sollicitors are such, as being learned in the Lawes, and informed of their Masters Cause, doe informe and instruct the Counsellors in the same.

Atturneies are such as by experience haue learned and doe know the orders and manner of proceeding in euery Courts where they serue, and doe

doe purchase out Writs and Processe belonging to their Clients Cause. They see to his Suits, that he be not hindred by negligence. They pay the fees belonging to the Courts, and prepare the Cause for iudgement.

The places for iudgement are the Courts where sentence is giuen, and the Lawes made: as the Parliament, Chancery, Kings Bench, the Common Pleas, the Exchequer, the Court of Wards, the Starre Chamber, the Court of Requests, and the Dutchie Court of Lancaster.

The matter of the Law is { Iustice, and Equity.

The manner of their seuerall proceedings, followeth.

CHAP.

CHAP. II.

Of the Parliament, and the authoritie thereof.

THe most high & absolute power of the Realme of *England* consisteth in the Parliament. For as in Warre where the King himselfe in person, the Nobilitie, the rest of the Gentilitie, and the Yeomanrie are, is the force and power of *England*: So in peace and consultation where the Prince is to giue life, and the last and highest commandement: the Baronie or Nobilitie for the higher: the Knights, Esquires, Gentlemen and Commons for the lower part of the Common-wealth: the Bishops for the Clergie be present to aduertise, consult and shew what is good, and necessary for the Common-wealth, and to consult together; and vpon mature deliberation, euery Bill or Law being thrice read and disputed vpon in either House, the other two

parts,

parts, first each a part, and after the Prince himselfe in presence of both the parties, doth consent vnto and alloweth. That is, the Princes and whole Realmes Deed: whereupon iustly no man can complaine, but must accommodate himselfe to find it good and obey it.

That which is done by this consent is called firme, stable and *sanctum*, and is taken for Law. The Parliament abrogateth olde Lawes, maketh new, giueth order for things past, and for things hereafter to be followed, changeth right and possessions of priuate men, legitimateth Bastards, establisheth formes of Religion, altereth Waights and Measures, giueth forme of succession to the Crowne, defineth of doubtfull Rights, whereof is no Law alreadie made, appointeth Subsidies, Tailes, Taxes, and Impositions, giueth most free pardons and absolutions, restoreth in Bloud and Name, as the highest Court condemneth or absolueth them whom the Prince will put

to triall. And to be ſhort, all that euer the people of *Rome* might doe, either *Centuriatis Comitijs* or *Tributis*, the ſame may be done by the Parliament of *England*, which repreſenteth, and hath the power of the whole Realme, both the head and bodie. For euery Engliſhman is intended to be there preſent either in perſon, or by procuration and attorney, of what preeminence, ſtate, dignitie or qualitie ſoeuer hee be, from the Prince, (be he King or Queene) to the loweſt perſon of *England*. And the conſent of the Parliament, is taken to be euery mans conſent.

Comitijs, Tributis.

The Iudges in Parliament are the King or Queens Maieſtie, the Lords Temporall and Spirituall, the Commons repreſented by the Knights & Burgeſſes of euery Shire & Borough Towne. Theſe all, or the greater part of them and that with the conſent of the Prince for the time being, muſt agree to the making of Lawes.

The Officers in Parliament are the Speakers, two Clarkes, the one for the

Higher Houſe, the other for the Lower, and Committies.

The Speaker is he that doth commend and preferre the Bils exhibited into the Parliament, and is the Mouth of the Parliament. Hee is commonly appointed by the King or Queene, though accepted by the aſſent of the Houſe.

The Clarkes are the keepers of the Parliament Rolls and Records, and of the Statutes made, and haue the cuſtodie of the priuate Statutes not printed.

The Committies are ſuch as either the Lords in the higher Houſe, or Burgeſſes in the Lower Houſe, doe chooſe to frame the Lawes vpon ſuch Bils as are agreed vpon, and afterward to be ratified by the ſame Houſes.

CHAP. III.

The forme of holding the Parliament.

THe Prince ſendeth forth his Reſcripts or Writs to euery Duke, Marqueſſe, Baron, and euery other Lord Temporall or Spirituall, who hath voice in the Parliament, to be at his great counſell of Parliament ſuch a day (the ſpace from the date of the Writ is commonly at the leaſt forty dayes) hee ſendeth alſo Writs to the Sheriffes of euery Shire, to admoniſh the whole Shire to chooſe two Knights of the Parliament in the name of the Shire, to heare and reaſon, and to giue their aduice and conſent in the name of the Shire: and to be preſent at that day: likewiſe to euery Citie and Towne, which of ancient time hath been wont to find Burgeſſes of the Parliament, ſo to make election, that they might be preſent there at the firſt day of the Par-

Parliament. The Knights of the Shire bee choſen by all the Gentlemen and Yeomen of the Shire, preſent at the day aſſigned for the election: the voice of any abſent can be counted for none. Yeomen I call here (as before) that may diſpend at the leaſt forty ſhillings of yeerely rent of free Land of his owne. Theſe meeting at one day, the two who haue the more of their voices, bee choſen Knights of the Shire for that Parliament: likewiſe by the plurality of the voices of the Citizens & Burgeſſes, be the Burgeſſes elected. The firſt day of the Parliament, the Prince and all the Lords in their Robes of Parliament doe meet in the Higher Houſe, where after Prayers made, they that be preſent are written, and they that be abſent vpon ſickneſſe, or ſome other reaſonable cauſe (which the Prince will allow) doe conſtitute vnder their hand and ſeale, ſome one of thoſe who be preſent, as their Procurer or Atturney, to giue voice for them, ſo that by

preſence, or Atturney, and Proxie they be all there, all the Princes and Barons, and all Archbiſhops and Biſhops, and (when Abbots were) ſo many Abbots as had voice in Parliament. The place, where the aſſembly is, is richly tapeſſed and hanged, a Princely and Royall Throne as appertaineth to a King, ſet in the middeſt of the higher place therof. Next vnder the Prince ſitteth the Chancellour, who is the Voyce and Oratour of the Prince. On the one ſide of that Houſe or Chamber, ſitteth the Archbiſhops and Biſhops, each in his ranke, on the other ſide the Dukes and Barons.

In the middeſt therof vpon Wool-ſackes ſitteth the Iudges of the Realme, the Maſter of the Rolls, and the Secretaries of Eſtate. But theſe that ſit on the Wool-ſackes haue no voyce in the Houſe, but only ſit there to anſwere their knowledge in the Law, when they be asked, if any doubt ariſe among the Lords: The Secretaries doe anſwere of ſuch letters

ters or things paſſed in counſell, whereof they haue the cuſtodie and knowledge: and this is called the vpper Houſe, whoſe conſent and diſſent is giuen by each man ſeuerally, and by himſelfe, firſt, for himſelfe, and then ſeuerally for ſo many as he hath Letters and Proxies, when it commeth to the queſtion, ſaying onely, content or not content, without further reaſoning or replying. In this meane time the Knights of the Shires, and Burgeſſes of Parliament (for ſo they are called that haue voyce in Parliament, and are choſen (as I haue ſaid before) to the number betwixt three and foure hundred) are called by ſuch as it pleaſeth the Prince to appoint, into an other great Houſe or Chamber by name, to which they anſwere: and declaring for what Shire or Towne they anſwere, then they are willed to chooſe an able and diſcreet man, to be as it were the Mouth of them all, and to ſpeake for, & in the name of them, and to preſent him ſo cho-

ſen by them to the Prince: which done they comming all with him to a Barre, which is at the nether end of the vpper Houſe, there hee firſt prayſeth the Prince, then maketh his excuſe of inabilitie, and prayeth the Prince that he would command the Commons to chooſe another. The Chancellour in the Princes name doth ſo much declare him able, as he did declare himſelfe vnable, and thanketh the Commons for chuſing ſo wiſe, diſcreet, and eloquent a man, and willeth them to goe and conſult of Lawes for the Common-wealth. Then the Speaker maketh certaine requeſts to the Prince in the Commons Name, firſt, that his Maieſtie would bee content that they may vſe and enioy all their Liberties and Priuiledges that the common houſe was wont to enioy.

Secondly, that they may frankly and freely ſay their mindes, in diſputing of ſuch matters as may come in queſtion, and that without offence to his Maieſtie.

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Thirdly, if any ſhould chance of that lower Houſe to offend, or not to doe or ſay as ſhould become him, or if any ſhould offend any of them being called to that his Highnes Court, that they themſelues might (according to the ancient cuſtome) haue the puniſhment of them. And fourthly, that if there come any doubt, whereupon they ſhall deſire to haue the aduice or conference with his Maieſtie, or with any of the Lords, they might doe it: all which he promiſeth in the Commons names, that they ſhall not abuſe, but haue ſuch regard as moſt faithfull, true, and louing Subiects ought to haue to their Prince.

The Chancellour anſwereth in the Princes name, as appertaineth. And this is all that is done for one day, and ſometime for two. Beſides the Chancellour, there is one in the vpper Houſe, who is called Clarke of the Parliament, who readeth the Bils. For all that commeth in conſultation either in the vpper Houſe

or in the neather Houſe, is put in writing firſt in paper, which being once read, he that will, riſeth vp and ſpeaketh with it or againſt it: and ſo one after another ſo long as they ſhall thinke good. That done, they goe to another, and ſo another Bill. After it hath beene once or twice read, & doth appeare that it is ſomewhat liked as reaſonable, with ſuch amendment in words, and peraduenture ſome ſentences, as by diſputation ſeemeth to be amended: in the vpper Houſe the Chancellour asketh if they will haue it ingroſſed, that is to ſay, put into parchment: which done, and read the third time, and that eſt-ſoones, if any be diſpoſed to obiect, diſputed againe among them, the Chancellour asketh if they will goe to the queſtion: and if they agree to goe to the queſtion, then hee ſaith, here is ſuch a Law or Act concerning ſuch a matter, which hath been thrice read heere in this Houſe, are yee content that it be enacted or no? If the Not contents be moe, then

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the Bill is daſhed, that is to ſay, the Law is annihilated, and goeth no farther. If the Contents be the moe, then the Clarke writeth vnderneath: *Soit baille aux commons.*

And ſo when they ſee time, they ſend ſuch Bils as they haue approoued, by two or three of thoſe which doe ſit on the Wool-ſackes to the Commons: who asking licence and comming into the Houſe, with due reuerence ſaith to the Speaker: Maſter Speaker, my Lords of the vpper Houſe haue paſſed among them and thinke good, that there ſhould bee enacted by Parliament ſuch an Act, and ſuch an Act, and ſo readeth the titles of that Act or Acts. They pray you to conſider of them, and ſhew them your aduice, which done they goe their way. They being gone, and the doore againe ſhut, the Speaker rehearſeth to the houſe what they ſaid. And if they bee not buſie diſputing at that time another Bill, he asketh them ſtraight way if they

will

will haue that Bill, or (if there bee moe) one of them.

In like manner in the lower houſe the Speaker ſitting in aſeat or chaire for that purpoſe ſomewhat higher, that he may ſee and be ſeene of them all, hath before him, in a lower ſeat his Clarke who readeth ſuch Bils as bee firſt propounded in the lower Houſe, or bee ſent downe from the Lords. For in that point each houſe hath equall authoritie, to propound what they thinke meete, either for the abrogating of ſome Law made before, or for making of a new. All Bils be thrice in three diuers dayes read and diſputed vpon, before they come to the queſtion. In the diſputing is a maruellous good order vſed in the lower Houſe. He that ſtandeth vp bare-headed, is to be vnderſtood, that he will ſpeake to the Bill. If moe ſtand vp, who that is firſt iudged to ariſe, is firſt heard, though the one doe prayſe the Law, the other diſſwade it, yet there is no altercation.

For

For euery man ſpeaketh as to the Speaker, not as one to another, for that is againſt the order of the Houſe. It is alſo taken againſt the order, to name him whom yee doe confute, but by circumlocution, as he that ſpeaketh with the Bill, or hee that ſpake againſt the Bill, and gaue this and this reaſon. And ſo with perpetuall Oration not with altercation, hee goeth through till hee haue made an end. He that once hath ſpoken in a Bill, though he be confuted ſtraight, that day may not reply, no though hee would change his opinion, So that to one Bill in one day, one may not in that Houſe ſpeake twiſe, for elſe one or two with altercation would ſpend all the time. The next day he may, but then alſo but once.

No reuiling or nipping wordes muſt be vſed. For then all the Houſe will cry, it is againſt the order: and if any ſpeake vnreuerently or ſeditiouſly againſt the Prince or the priuy Counſell, I haue ſeene them not

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onely interrupted, but it hath beene mooued after to the Houſe, and they haue ſent them to the Towre. So that in ſuch a multitude and in ſuch diuerſitie of Mindes and Opinions, there is the greateſt modeſty and temperance of ſpeech that can be vſed. Neuertheleſſe, with much doulce and gentle termes, they make their reaſons as violent and as vehement the one againſt the other as they may ordinarily, except it bee for vrgent cauſes, and haſting of time. At the afternoon they keep no Parliament. The Speaker hath no voice in the Houſe, nor they will not ſuffer him to ſpeake in any Bill to moue or diſſwade it. But when any Bill is read, the Speakers Office is, as briefly and as plainly as he may, to declare the effect thereof to the Houſe. If the Commons doe aſſent to ſuch Bils as bee ſent to them firſt agreed vpon from the Lords thus ſubſcribed, *Les communs ont aſſentus*, ſo if the Lords doe agree to ſuch Bils as bee firſt agreed vpon by the Commons, they

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ſend them downe to the Speaker thus ſubſcribed, *Les Seigneurs ont aſſentus*. If they cannot agree, the two Houſes (for euery Bill from whence ſoeuer it doth come, is thriſe read in each of the Houſes) if it bee vnderſtood that there is any ſticking, ſomtimes the Lords to the Commons, ſometime the Commons to the Lords doe require that certaine of each houſe may meet together, and ſo each part to bee enformed of others meaning, and this is alwayes granted. After which meeting for the moſt part, not alwayes, either part agrees to others Bils.

In the vpper houſe they giue their aſſent and diſſent, each man ſeuerally and by himſelfe, firſt, for himſelfe, and then for ſo many as hee hath proxie. When the Chancellour hath demanded of them, whether they will go to the queſtion after the Bill hath beene thrice read, they ſaying only, content or not content, without further reaſoning or replying: and as the more number doth agree,

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ſo it is agreed on, or daſhed.

In the nether Houſe none of them that is elected, either Knight or Burgeſſe can giue his voice to another, nor his conſent or diſſent by proxie. The more part of them that be preſent only maketh the conſent or diſſent. After the Bill hath beene twice read, and then ingroſſed, and eftſoones read and diſputed on enough as is thought, the Speaker asketh if they will goe to the queſtion: And if they agree, he holdeth the Bill vp in his hand and ſaith: As many as will haue this Bill goe forward, which is concerning ſuch a matter, ſay yea. Then they which allow the Bill cry yea, and as many as will not, ſay no: as the cry of yea or no is bigger, ſo the Bill is allowed or daſhed. If it be a doubt which cry is bigger, they diuide the Houſe, the Speaker ſaying, as many as doe allow the Bill goe downe with the Bill, and as many as doe not, ſit ſtill. So they diuide themſelues, and being ſo diuided they are numbred who made the more.

more part, and ſo the Bill doth ſpeed. It chanceth ſometime that ſome part of the Bill is allowed, ſome other part hath much controuerſie and doubt made of it: and it is thought if it were amended it would goe forward. Then they chooſe certaine *Committees* of them who haue ſpoken with the Bill and againſt it, to amend it, and bring it againe ſo amended, as they amongſt them ſhall thinke meet: and this is before it is ingroſſed, yea, and ſometime after. But the agreement of theſe *Committees* is no preiudice to the houſe. For at the laſt queſtion they will either accept it or daſh it, as it ſhall ſeeme good, notwithſtanding that whatſoeuer the *Committees* haue done.

Thus no Bill is an Act of Parliament, Ordinance, or Edict of Law, vntill both the houſes ſeuerally haue agreed vnto it after the order aforeſaid, no nor then neither. But the laſt day of that Parliament or Seſſion, the Prince commeth in perſon in his Parliament Robes, and ſitteth in his ſtate:

ſtate: all the vpper Houſe ſitteth about the Prince in their ſtates and order in their Robes. The Speaker with all the common houſe commeth to the Barre, and there after thankſgiuing firſt in the Lords Name by the Chancellour, &c. And in the Commons Name by the Speaker to the Prince, for that he hath ſo great care of the good gouernment of his people, and for calling them together to aduiſe of ſuch things as ſhould be for the reformation, eſtabliſhing, and ornament of the Common-wealth: the Chancellour in the Princes Name giueth thankes to the Lords and Commons for their pains and trauels taken, which hee ſaith the Prince will remember and recompence when time and occaſion ſhall ſerue, and that he for his part is ready to declare his pleaſure concerning their proceedings, whereby the ſame may haue perfect life and accompliſhment by his Princely authoritie, and ſo haue the whole conſent of the Realme. Then one readeſ

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the titles of euery Act which hath paſſed at that Seſſion, but onely in this faſhion: An Act concerning ſuch a thing, &c. It is marked there what the Prince doth allow, and to ſuch he ſaith: *Le Roy*, or *la Royne le veult*. And thoſe bee taken now as perfect Lawes and Ordinances of the Realme of *England*, and none other, and, as ſhortly as may be, put in print, except it bee ſome priuate Caſe or Law made for the benefit or preiudice of ſome priuate man, which the *Romanes* were wont to call *Priuilegia*. Theſe be onely exemplified vnder the Seale of the Parliament, and for the moſt part not printed. To thoſe which the Prince liketh not, he anſwereth, *Le Roy*, or *la Rayne ſadviſera*, and thoſe be accounted vterly daſhed and of none effect.

This is the order and forme of the higheſt and moſt authenticall Court of *England*, by vertue whereof all thoſe things be eſtabliſhed whereof I ſpake before, and no other meanes accounted auaileable to make any

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new forfeiture of life, member, or Lands of any Englishman, where there was no Law ordained for it before. Now let vs speake of the said parts when they be seuerall.

CHAP. IV.

Of the Monarch, King, or Queene of England.

THe Prince whom I now call (as I haue often before) the Monarch of *England*, King, or Queene, hath absolutely in his power the authoritie of Warre and Peace, to defie what Prince it shall please him, and to bid him Warre, and againe to reconcile himselfe and enter into League or Truce with him at his pleasure, or the aduice onely of his priuy Councell. His priuy Councell are chosen all at the Princes pleasure out of the Nobilitie or Baronie, and of the Knights and Esquires, such and so many as he shall thinke good, who

who doe consult daily, or when need is, of the waighty matters of the Realme to giue therein to their Prince the best aduice they can. The Prince doth participate to them all, or so many of them as he shall thinke good, such Legations and Messages as come from forreigne Princes, such Letters or Occurrents as bee sent to himselfe or to his Secretaries, and keepeth so many Ambassages and Letters sent vnto him secret as hee wil, although these haue a particular oath of a Counsellour touching faith and secrets administred vnto them when they be first admitted into that company. So that herein the Kingdome of *England* is farre more absolute then either the Dukedome of *Venice* is, or the Kingdom of the *Lacedemonians* was. In warre time, and in the field the Prince hath also absolute power, so that his word is a law, hee may put to death, or to other bodily punishment, whom hee shall thinke so to deserue, without processe of Law or forme of iudgement:

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This hath been ſometime vſed within the Realme before any open war, in ſuddaine inſurrections and rebellions, but that not allowed of wiſe and graue men, who in that their iudgement had conſideration of the conſequence and example, as much as of the preſent neceſſitie, eſpecially when by any means the puniſhment might haue beene done by order of Law. This abſolute power is called martiall Law, and euer was, and neceſſarily muſt be vſed in all Campes and Hoſts of men, where the time nor place doe ſuffer the tarriance of pleading and proceſſe be it neuer ſo ſhort, and the important neceſſitie requireth ſpeedie execution, that with more awe the Souldiers might be kept in more ſtraight obedience, without which neuer Captaine can doe any thing vaileable in the wars.

The Prince vſeth alſo abſolute power in crying and decreeing the money of the Realme by his Proclamation onely. The mony is alwayes ſtamped with the Princes Image and

title.

title. The forme, fashion, manner, weight, fineneſſe and baſeneſſe thereof, is at the diſcretion of the Prince. For whom ſhould the people truſt more in that matter than their Prince, ſeeing the Coine is only to certifie the goodneſſe of the metall and the waight, which is affirmed by the Princes Image and marke? But if the Prince will deceiue them, and giue them Copper for Siluer or Gold, or inhance his Coine more than it is worth, hee is deceiued by his Subiects. For in the ſame ſort they pay the Prince his Rents and Cuſtomes. And in time they will make him pay ratibly or more for meate, drinke, and victuals for him and his, and for their labour; which experience doth teach vs now in our dayes to bedone in all Regions. For there euer hath beene and euer will be a certaine proportion betweene the ſcarcitie and plentie of other things, with Gold and Siluer. For all other Meaſures and Waights, aſwell of dry things as of wet, they haue

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accuſtomed to be eſtabliſhed or altered by the Parliament, and not the Princes Proclamation onely.

The Prince vſeth alſo to diſpenſe with Lawes made, whereas equitie requireth a moderation to bee had, and with paines for tranſgreſſing of Lawes, where the paine of the Law is applied onely to the Prince. But where the forfeit (as in popular actions it chanceth many times) is part to the Prince, the other part to the Declarator, Detector or Informer, there the Prince doth diſpenſe for his owne part onely. Where the criminall action is intended by inquiſition (that manner is called with vs at the Princes ſute) the Prince giueth abſolution or pardon, yet with a clauſe, *modo ſtet rectus in curia*, that is to ſay, that no man obiect againſt the Offendor. Whereby notwithſtanding that he hath the Princes pardon if the perſon offended will take vpon him the accuſation (which in our Language is called the Appeale) in caſes where it lieth,

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the Princes pardon doth not ſerue the offender.

The Prince giueth all the chiefe and higheſt Offices or Magiſtracies of the Realme, be it of Iudgement or Dignitie, Temporall or Spirituall, and hath the tenths and firſt fruits of all Eccleſiaſticall promotions, except in the Vniuerſities, and certaine Colledges, which bee exempt.

All Writs, Executions, and Commandements, be done in the Princes Name. We doe ſay in *England*, the life and member of the Kings ſubiect are the Kings only, that is to ſay, no man hath *hault* nor *moyenne* Iuſtice but the King, nor can hold plea thereof. And therefore all thoſe Pleas which touch the life or mutilation of man be called Pleas of the Crown, nor can be done in the name of any inferiour perſon than hee or ſhe that holdeth the Crowne of *England*. And likewiſe no man can giue pardon thereof but the Prince onely: although in times paſt there were

certaine Countie Palatines, as *Chester*, *Durham*, and *Elie*, which were *hault* Iusticers, and Writs went in their Name, as also some Lord Marches of *Wales*, which claimed like priuiledge: all these are now worne away. The supreame Iustice is done in the Kings Name, and by his authoritie onely.

The Prince hath the Wardship and first Marriage of all those that hold Land of him in chiefe. And also the gouernment of all fooles naturall, or such as be made by aduenture of sickenesse, and so continue if they bee landed. This being once grounded by Act of Parliament (although some inconuenience hath bin thought to grow thereof, and since that time it hath beene thought very vnreasonable) yet once annexed to the Crowne, who ought to go about to take the Club out of *Hercules* hand? And being gouerned iustly and rightly, I see not so much inconuenience in it, as some men would make of it: diuers other rights and pre-

preheminences the Prince hath, which be called Prerogatiues Royall, or the Prerogatiue of the King, which bee declared particularly in the Bookes of the Common Lawes of *England*.

To be short, the Prince is the life, the head, and the authoritie of all things that be done in the Realme of *England*. And to no Prince is done more honour and reuerence, then to the King and Queene of *England*: no man speaketh to the Prince, nor serueth at the table, but in adoration, and kneeling, all persons of the Realme be bare headed before him: in so much that in the Chamber of Presence, where the Cloath of Estate is set, no man dare walk, yea though the Prince be not there, no man dare tarry there but bare-headed. This is vnderstood of the Subiects of the Realme, for all Strangers be suffered there and in all places to vse the manner of their Country, such is the ciuilitie of our Nation.

CHAP. V.

The chiefe points wherein one Common-wealth doth differ from another.

NOw that wee haue ſpoken of the Parliament (which is the whole, vniuerſall, and generall conſent and authoritie alwell of the Prince, as of the Nobilitie and Commons, that is to ſay, of the whole head and body of the Realme of *England*) and alſo of the Prince, (which is the Head, Life and Gouernour of this Common-wealth) there remayneth to ſhew, how this Head doth diſtribute his authoritie and power to the reſt of the members for the gouernment of this Realm, and Common-wealth of the politicke bodie of *England*.

And whereas all Common-wealths and Gouernments be moſt occupied, and be moſt diuers in the faſhion of fiue things: In making of Lawes and

and Ordinances, for their owne gouernment: in making of battaile and peace, or truce with forreigne Nations: in prouiding of money for the maintenance of themselues and defence of themselues against their their enemies: in chooſing and election of the chiefe Officers and Magiſtrates: and fiftly, in the adminiſtration of iuſtice. The firſt and third wee haue ſhewed is done by the Prince in Parliament. The ſecond and fourth, by the Prince himſelfe: the fifth remayneth to be declared.

CHAP. VI.

Of three maners and formes of tryals or iudgements in England.

BY order and vſage of *England*, there be three wayes and maners, whereby abſolute and definite

iudgement is given, by Parliament, which is the highest and most absolute, by Battaile, and by the great Assise.

CHAP. VII.

Tryall, or Iudgement by Parliament.

THe manner of giuing iudgement by Parliament betweene priuate and priuate men, or betweene the Prince and any priuate men, be it in matters Criminall or Ciuill, for land or for heritage doth not differ from the order which I haue prescribed, but it proceedeth by Bill thrice read in each House, and assented to, as I haue said before, and at the last day confirmed & allowed by the Prince, howbeit such Bils be seldome receiued, because that great Councell being enough occupied with the publike affaires of the Realme, will not gladly

gladly intermeddle it selfe with priuate quarrels and questions.

CHAP. VIII.

The tryall of Iudgement by Battaile.

THis is at this time not much vsed, partly because of long time the Pope and the clergy, to whom in time past we were much subiect, alwayes cryed against it as a thing damnable and vnlawfull: and partly because in all Common-wealths, as to the tongue so to the manners, fashions, habits, yea, & kinds of tryals & iudgements, and to all other things that is there in vse, time and space of yeeres bringeth a change. But I could not yet learne that it was euer abrogated. So that it remayneth in force, whensoeuer it bee demanded. The manner of it is described in *Britton*.

CHAP. IX.

The tryall by Assise or twelue men, and first of the three parts which bee necessary in iudgement.

THe two first iudgements be absolute, supreame and without appeale, and so is also the iudgement by the great Assise. And the cause or manner of Iudgements in *England* is in many things different from the fashion vsed either in *France* or in *Italy*, or in any other place. If the Emperours Lawes and Constitutions (called the Ciuill Lawes) be put in vse, it will bee necessary here to make a litle digression, to the intent that that which shall be said hereafter, may be better vnderstood. All pursutes and actions (wee call them in our English tongue, pleas) and in barbarous (but now vsuall Latine) *placita*, taking that name, *abusiuè* of the definitiue sentence, which may

may well be called *placitum*, or ἀρεστον. The French vsed the same, called in their Language, the sentence of their Iudges *areste*, or *arest*, in which words notwithstanding after their custome they doe not sound the *s*. But we call *placitum*, the action, not the sentence, and *placitare* barbarously, for to plead in English, *agere*, or *litigare*. Now in all iudgments bee two parties, the first wee call the Impleader, Suiter, Demander, or Demandant, and Plaintiffe. In Criminall Causes, if hee professe to be an accuser, we call him appellant, or appelour, and so, accusation wee call appeale. The other wee call the Defendant, and in Criminall causes, prisoner, for he cannot answere, in causes Criminall, before he doe render himselfe, or be rendered prisoner.

Iudex, is of vs called Iudge, but our fashion is so diuers, that they which giue the deadly stroke, and either condemne or acquite the man for guilty or not guilty, are not cal-

led Iudges, but the twelue men. And the same order is as wel in ciuill matters and pecuniary, as in matters criminall.

CHAP. X.

Of Pleas or Actions.

PLeas or Actions Criminall, be in English called Pleas of the Crowne, which bee all those which tend to take away a mans life or any member of him, for his euill deseruing against the Prince and Common-wealth.

And this name is giuen not without a cause. For taking this for a principle, that the life and member of an Englishman is in the power onely of the Prince and his Lawes, when any of his Subiects is spoyled either of life or member, the Prince is endamaged therby, and hath good cause to aske account how his Subiects should come to that mischiefe.

And

And again, for so much as the Prince who gouerneth the Scepter, and holdeth the Crowne of *England* hath this in his care and charge, to see the Realme well gouerned, the life, members, and possessions of his Subiects kept in peace and assurance: he that by violence shall attempt to break that peace and assurance, hath forfeited against the Scepter and Crowne of *England*: and therefore not without a cause in all inquisitions and indictments, if any be found by the twelue men to haue offended in that behalfe, straight the Prince is said to be party, & he that shall speak for the prisoner shall be rebuked, for speaking against the Prince. Nevertheless, it is neuer forbidden, but the prisoner, and party Defendant, in any cause may alleadge for him all the reasons, means, and defences that he can, and shall be peaceably heard and quietly. But in those pleas and pursuites of the Crowne, Procuror or Aduocate hee gets none, which in ciuill and pecuniary matters

Saving in appeales, & upon a speciall plea *Affile*, is the parties whole suit: *Breue* is the Kings precept.

ters (be it for Land, Rent, Right, or Possession, although he plead against the Prince himselfe) he is neuer denied.

Pleas Ciuill be either personall or reall: personall, as contracts, or for iniuries: reall, be either possessory, to aske, or to keepe the possession, or in *rem*, which wee call a Writ or Right. For that which in the Ciuill Law is called *actio* or *formula*, wee call Writ in English, so the Greeks called it word for word γραφὴ, and in our babarous Latine we name it *Breue*.

And as the olde Romans had their actions some *ex iure ciuili*, and some *ex iure prætorio*, and ordinarily *prætor dabat actiones, & formulas actionum*: so in *England* we retaine still this, and haue some Writs out of the Chancery, other out of the Common Pleas or the Kings Bench.

CHAP.

CHAP. XI.

Of the chiefe Tribunals, Benches, or Courts of England.

IN times past (as may appeare to him that ſhall with iudgement reade the Hiſtories and Antiquities of *England*) the Courts and Benches followed the King and his Court whereſoeuer hee went, eſpecially ſhortly after the Conqueſt. Which thing being found very comberſome, painfull, and chargeable to the people, it was agreed by Parliament, that there ſhould bee a ſtanding place where iudgement ſhould be giuen. And it hath long time beene vſed in Weſtminſter Hall which King *William Rufus* builded for the Hall of his owne houſe. In that Hall be ordinarily ſeene three Tribunals, or Iudges ſeats. At the entry on the right hand the Common Pleas where ciuill matters are to be pleaded, ſpecially ſuch as touch Lands or

Con-

Contracts. At the vpper end of the Hall on the right hand, the Kings Bench where Pleas of the Crowne haue their place. And on the left hand sitteth the Chancellor accompanied with the Master of the Rolls, who in Latine may be called *custos archiuorum Regis*, and certaine men learned in the Ciuill Law, called Masters of the Chancere, in Latine they may be called *Assessores*.

CHAP. XII.

Of the times of pleading called Termes: and of the Chancellour and Chancerie.

TWo things may bee moued in question here, how all *England* (being so long and so large, and hauing so many Shires and Prouinces therein) can be answered of iustice in one place, and in three Benches, be they neuer so great? Another (whereas the Kings Bench is exercised

eiſed in criminall cauſes, and in all pleas of the Crowne, and the Common place in all ciuill cauſes (reall, and perſonall) what place then hath the Chancerie?

The firſt queſtion will ſeeme more maruellous, and haue more occaſion of doubt, when I ſhal alſo tel that the Law is not open at all times, no, not the third part of the yeare. But where all other Cities & Commonwealths had all the yeare Pleas, Suites and Iudgements, except for certaine holydayes and Harueſt, Vintage, or when for ſome vrgent cauſe the Law was commanded to bee ſtopped, which is called *Iuſtitium:* contrarie in ours it is but few times open. That is onely foure times in the yeare, which they call Tearmes: After Michaelmas about ten dayes, during fiue or ſix weekes at the leaſt. After Chriſtmas about a moneth enduring by the ſpace of three weeks. Then from ſeuenteene dayes after Eaſter by the ſpace of three weekes and odde dayes. Likewiſe from the ſix or ſe-

uenth day after Trinitie Sunday, during two weeks and odde dayes. All the reſt of the yeare there is no pleading, entring nor purſuing of actions. This ſmall time, and all that but in one place, may ſeeme very iniurious to the people, who muſt be faine to ſuffer much wrong for lacke of Iuſtice, and of place and time to plead: but vnto that hereafter I intend to anſwere more fully, and at large, and in the meane while that ſhall ſuffice which the wiſe *Cato* anſwered to one who moued, that the pleading place in Rome might be couered ouer with canuaſſe, as their Theaters were, to the intent that the Plaintiffes and defendants that were there might pleade their matters more at eaſe, and not bee in ſo much danger of their health by the heate of the Sunne ſtriking ful & open vpon their heads, which was no ſmall griefe and diſeaſe ſpecially at Rome. Nay (ſaith *Cato*) for my part I had rather wiſh that all the wayes to the place of pleading were caſt

caſt ouer with Galthrops, that the feete of ſuch as loue ſo well pleading ſhould feele ſo much paine of thoſe pricks in going, as their heads doe of the Sunne in tarrying there: he meant that they were but idle, hot heads, buſie-bodies, and troubleſome men in the Common-wealth that did ſo nourish pleading: good labourers and quiet men could bee content to end their matters at home by iudgment of their neighbours and kinsfolke, without ſpending ſo their money vpon Procurers and Aduocates whom we call Atturneys Counſellors, Sergeants, and generally men of Law. Thoſe be accounted profitable Citizens who attend their honeſt labour and buſines at home, and ſtand not waiting and gaping vpon their Roles and Proceſſe in the Law: as for the other, by his iudgement, it was no matter what miſchiefe they ſuffered. To the other queſtion of the Chancerie, this I anſwere: That our law which is called of vs the common law, as

yee

yee would say *Ius ciuile*, is, and standeth vpon ἀκριβοδίαις, that is *Ius summum*: and their maximes be taken so streightly, that they may not depart from the tenour of the words, euen as the old ciuill Law was. And therefore as that lacked the help of the *Prætor* (which might *moderari illud ius summum*, giue actions where none was, mittigate the exactnesse and rigour of the law written, give exceptions as *metus, doli mali, minoris ætatis &c.* for remedies, and maintaine alwayes *æquum bonum*:) the same order and rancke holdeth our Chancerie, & the Chancellor hath the very authoritie herein as had the *Prætor* in the old ciuill Law before the time of the Emperours. So hee that putteth vp his bill in the Chancery after that he hath declared the mischiefe where in he is, hath reliefe as in the solemne *Forum*. And for as much as in this case hee is with out remedie in the common Law, therefore he requireth the Chancelour according

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to equitie and reason to prouide for him and to take such order as to good conscience shall appertaine. And the Court of the Chancerie is called of the common people the court of Conscience, because that the Chancellor is not strained by rigor or forme of words of Law to iudge but *ex æquo* and *bono* and according to conscience as I haue said. And in this Court the vsuall and proper forme of pleading of England is not vsed but the forme of pleading by writing, which is vsed in other countries according to the ciuil Law and the trial is not by twelue men, but by the examination of witnesse as in other Courts of the ciuill Law.

Out of this Court, as from the person of the Prince come all manner of originall Writs. The declaration of writs is at large set downe in the register of writs and in the *Natura brevium*, Out of this Court come most commonly Commissions, Patents, Licences, Inquisitions, &c.

The Iudges of this court are the L. Chan-

Chancelour of England, assistants, the Masters of the Rols and six Masters of the Chancery, which are cõmonly Doctors of the Ciuil Law.

Officers are the fixe Clarks of the Chancery, the Clark of the Crowne general, the Register, Controler of the Seale, two examiners, the Clark of the Hamper, the three clarks of the Petty bag, the Cursiters, the Sergeant of the Mace.

The Lord Chancelor is the keeper of the great Seale, and hath it carried with him whersoeuer he goeth.

The Master of the Rols is the keeper of the Records, Iudgments, and sentences giuen in the Court of Chancerie.

The six Masters are assistants to the Court, to shew what is the equity of the ciuill Law, & what is conscience.

The Clarke of the Crowne is the chiefe Guardian of the matters of the Crowne: what are Crowne matters, and pleas of the Crowne, see in the learned Booke of *Stanford* called the *Pleas of the Crowne.*

The

The six Clarks are the Atturnies as well for the Plantiffe, as Defendant, in every suite in the Court.

The Register is the engrosser and keeper of the decrees, publications, orders, and injunctions issuing out of this Court.

The two examiners are such as take the examination of the witnesses brought to prove or reprove any thing in suite in this Court, and to put their depositions and answers made to their interrogatories in writing.

The Controler of the Seale is to see and allow of all the Writs made in this Court.

The Clarke of the Hamper is hee that doth receive the fines due for every Writ sealed in this Court.

The three Clarks of the Pettie bag, are they that receive the Offices that are found in the Court of Wards.

The Curfiters are Clarks appointed to their severall shires which doe write originall writs that belong

to

to this court or the common place.

The Sergeant carrieth the Mace before the Lord Chancelor, & is to call any man before him at his commandement.

The Processe in the Chancerie is a *Sub pœna*, which is but to call the partie before him upon a paine, as upon paine of xl.li. &c. And this is the way used to bring in the party, or else by the Sergeant as before.

The punishment is, if the party will not come in, or comming in, will not obey the order of the court, imprisonment during the pleasure of the Lord Chancellor.

The order of proceeding is by Injunctions, Decrees, and orders which are to binde the partie, and if hee resist, his punishment is imprisonment.

The matter in this court are all causes wherein equity and extremitie of Law doe strive, and where the rigour of Lawes have no remedy, conscience and the moderation of *Summum jus* hath sufficient.

And

And here is to be noted, that conscience is so regarded in this court, that the Lawes are not neglected, but they must both joyne and meete in a third, that is, a moderation of extremity.

This court is called of some *Officina Iuris Ciuilis Anglorum*, because out of this court issue all manner of Processe which give the partie his cause of action in other Courts.

CHAP. XIII.

Of Iudges in the Common Law of England, and the manner of triall and pleading there.

THE Prince out of the numbers of those who haue bin Counsellours or Sergeants at the Law, which bee those who in Latine are called *causidici* or *aduocati*, chooseth two of the most approued for learning, age, discretion, and exercise,

cise, of whom the one is called chiefe Iustice of the Kings Bench, or simply Chiefe Iustice, the other of the Common Place, and others to the number of sixe or more, which haue each an ordinary fee or stipend of the Prince.

These doe sit at such dayes as be terme, which may be called *Dies legitimi, juridici*, or *fasti*, in their distinct places as I haue said before. There they heare the pleading of all matters which doe come before them: and in ciuill matters where the pleading is for Money, or Land, or Possession, part by Writing, and part by Declaration & Altercation of the Aduocates the one with the other, it doth so proceed before them till it doe come to the issue, which the Latines doe call *statum causæ*, I doe not meane *contestationem litis*, but as the Rhetoricians do call *status*, we doe most properly call it the issue, for there is the place where the debate and strife remaineth (as a water held in a close and darke vessell

veſſell iſſueth out, and is voyded and emptied) and no where elſe: that ſtroke well ſtricken is the departing of all their Quarrels. Iſſues or *ſtatus* in our Law be ordinarily two, *facti* and *juris*.

CHAP. XIV.

Of the Kings Bench.

THe Kings Bench is the Kings Court, ſo called becauſe vſually the Kings haue ſitten there, and alſo becauſe that therein all cauſes are handled which appertaine to the Crowne: and ſuch cauſes as wherein the King or Queene is a party, if they properly appertaine not to ſome other Court.

The Iudges of the Kings Bench are the Lord chiefe Iuſtice of England with other his compations aſſiſtant in giuing judgement.

The Sergeants and Counſellors doe debate the cauſe.

The sentence is given by the chiefe Iustice, the others all or the most part assenting, as it shall appeare to be in other Courts likewise. If they cannot agree, then is the matter referred to a demurre in the Exchequer chamber before all the Iustices of both the Benches, *viz.* the Kings Bench, and the Common Pleas, and the Lord Chiefe Baron of the Exchequer.

The Officers in the Kings Bench, are the chiefe Protonothary, the Secondary, the Clarke of the Crowne, the Clarke of the Exigents, the Clarke of the Papers, the Custos Breuium, and Custos Sigilli.

The Protonothary is he, that recordeth all Iudgements, Orders, and Rules in this Court, and all Verdicts giuen, being not of Crowne matters.

The Secondary is the Protonotharies Deputie, for the said causes, and he is the keeper and maker up of these Records in Bookes.

The Clarke of the Crowne, is to frame

frame all Indictments of Felony, Treaſon, Murther, &c. all manner of Appeales, & after to record them and enter the Verdict, and to make and keepe the Records touching theſe matters.

The Clarke of the Exigents is to frame all manner of Proceſſes of *Exigi facias*, which doe iſſue out of that Court to out-law any man, and to record the out-lawry.

The Clarke of the Papers is hee that keepeth all Rols, Scripts, and pleadings, and other things in writing which are not of Record.

The Cuſtos Breuium is he which fileth all the Writs Iudiciall and Originall, after the Sheriffe hath returned them: he is chargeable if any be embeſeled or priuily conueyed away from the file.

The Cuſtos Sigilli is he that doth keepe the Seale, and ſeeketh all judiciall Writs and all Patents, Licences iſſuing out of this Court, and taketh the fee due for them, and thereof to make his account.

There are certaine Attornies belonging to this Court in number as the Protonotary shall appoint: those are for Plaintiffes and Defendants in euery cause, and they frame and make the pleadings.

The manner of proceeding in this Court is by Latitat, Arrest, and Bill.

The Latitat, is to bring the party in, when he is not to be found, or will not appeare and answer.

Arrest is when the party is arrested, and then is driven to finde baile, *viz.* two sufficient sureties or more as the case shall need.

By Bill the Suite is when the party is in *Custodia Marescballia*, and from thence brought to answer.

The matters of this Court are properly all matters of the Crowne, whereof see *Standfords* Booke aforesayd.

In these they proceed by Indictments, Verdict, Appeale, improperly all suites wherein the King is a party, or haue any losse. Such are

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conſpiracies, champarties, Imbraſier, Maintenance, *Deciſtantum maymes*, Slanders, Actions *ſur le cas*: of theſe ſee *Natura Brevium*.

CHAP. XV.

Of the Court of Common-Pleas.

THe Court of Common Pleas is the Kings Court, wherein are holden all common pleas betweene Subject and Subject, of all matters of common Law: ſo called, for that it ſerueth for the exact and preciſe adminiſtration of the common Law.

The Iudges in this court are, the Lord chiefe Iuſtice of the common Pleas, three other his Aſſociats: The Sergeants at the Law whoſe number is ſometimes more, ſometimes leſſe, at the pleaſure of the Prince. Theſe all are ſworne to ſerue the turne of the common Law at this Barre.

Two of them are alwayes appoin-

ted to serue the Princes turne in what Court soever, and are called the Kings Sergeants.

The Officers of this Court are the Custos Breuium, three Protonotaries, the Clarke of the Warrants, the Clark of the Essoynes, divers Atturnies, Fillisers for every Shire, the Clarke of the Iuries, the Chirographer for fines, the Clark of the Kings silver for errours in this Court committed, the Clarke of the Seale, as before for the Kings Bench.

The Custos Brevium is the chiefe Clarke in the Court, and hee hath the custody of all the Writtes whatsoever returnable into this court, come they either at the day of the returne, or after the day which is called *post diem.*

The Protonotharies are they which after the parties have appeared in court, do enter the matters in suite, and make the pleadings, and enter them.

The Fillisers are they which make up all meane processe upon the originall

originall Writts, and the ſame Writs returned by the Sheriffe, are by the Atturnies delivered to the cuſtos Brevium to file or ſtring, there to remaine on Record.

The Exigenters are ſuch as make out the Exigents and Writs of Proclamation to every county, where the parties are, that upon the ſame Proceſſe or Summons will not appeare.

The clarke of the Warrants is he which doth take the Warrants of an Atturney, which ſhall proſecute for the Plaintiffe or Defendant: and is he that enrolleth all deeds acknowledged before the Iuſtices of the ſame court.

The clarke of the Eſſoynes, is he which doth eſſoyne the Defendants in every Action, before the day of his appearance.

An eſſoyne is an ordinary delay by Office of court in action: and the Officer before whom the clarke is to take the Eſſoyne, is the puny Iuſtice in the common pleas, who

for that purpose, sitteth three dayes before the Tearme.

The common Atturnies are such as are allowed in this court, by the Lord chiefe Iustice of the common Pleas, and his Assistants to prosecute or defend according to the instructions of their clients for the Plaintiffe or Defendant.

The clarke of the Iuries is he that doth make the *Venire Facias*, to the Sheriffe to warne the Iuries by.

The Chirographer is he that hath the Writ of covenant with the concord brought unto him, and he maketh the Indenture tripartite, whereof two are delivered to the party for whose use the fine is acknowledged. And the third part is reserved with him. And all the Proclamations of the same fine according to the Statutes made, are endorsed on the third part remayning, and it is commonly called the foote of the fine.

The clarke of the Kings silver is a distinct Office of the fines, and is

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he who setteth downe the money that his Majesty is to have for the fine, according to the yearely value of the Land confessed, knowne, deposed, or agreed upon.

All Errours in this court committed, are reformed in the Kings Bench, before the Lord chiefe Iustice, and other Iustices there assistant by Writ of Errour.

There is also the clarke of the Out-lawries, who is the Kings Atturny Generall, and he entreth the Out-lawry for the King, after the Exigent delivered: and he maketh all the Writs of Out-lawry: and none are to be made but by him.

The matters of the common Pleas are all suites of common Law commenced by any Writ originall, reall, or personall.

Reall are such as touch the inheritance, or fee of any man.

Personall are such as touch transitory things, as goods, chattels, Personall wrongs.

The difference betweene a writ

Originall, and a Writ Iudiciall, is this: the originall saith in the end of it (in the person of the King or Queene) *teste me ipso*, or *me ipsa apud Westmonasterium*. The Iudiciall Writ saith in the end, *Teste Christopharo Wray*, or *Teste Iacobo Dyer*, or such other as shall be the Lord chiefe Iustice of either of those Benches.

The order of processe how they follow the one after the other. In this court is first a *Summoneas* in some Action, then *Attachias*, but in most a *Capias*, then a *Capias pluries*, then *Exigi facias*, and a Proclamation into the county where the Defendant dwelleth.

The *Summoneas* is the originall, and goeth out of the chancery, and is directed to the Sheriffe, to bring the party by a day.

The Sheriffes order in serving this Writ, is to goe himselfe, or his Bayliffe, to the Land, and there to garnish the party, by sticking up a stick on his Land, which done, the Sheriffe returneth two common pledges,

ges, *Iohannes Do*, and *Richardus Ro*, and two *Summonees*, *Richardus Den*, *Henricus Fen*. After the Summonees, if the party come not in, issueth out an *Attachias* in nature of a precept, to authorize the Sheriffe to go to his Land or House, and there to take a pledge for his appearance.

But if the party Plaintiffe meane to out-law the Defendant, he getteth a *Summoneas* out of the chancery to the Sheriffe to warne the party, who returneth *nihil habet*, &c. Then the Plaintiffe getteth a *Capias* to take his body, and then an *Alias Capias*, then a *Pluries Capias*, to all which the Sheriffe returneth in order as they be given out, *non est inventus*, after which if the Party appeare not, goeth out to the Sheriffe the *Exigi facias*, and a Proclamation to proclaime the party in five severall county dayes: after which Proclamations, if he doe not appeare, he is returned *Quinto exactus*, & *non comparuit* & *ideo vtlagatus*, unlesse

leſſe hee doe firſt purchaſe a *Superſedeas*, to the court to furceaſe. The *Superſedeas* is granted at the ſuite of the Defendant, to ſtay the Out-lawrie, and is an appearance to the ſuite for the Defendant, ſuggeſting to the court, that his Exigent *improvide emanavit* ſhewing that the Defendant was alwayes ready to appeare by his Atturney. This done, the Plaintiffe declareth, the Defendant anſwereth, if the anſwere bee iſſuable they proceed to tryall.

The manner of proceeding is either to joyne iſſue, and ſo to paſſe to Verdict, or elſe to Demurre. The tryall is by Verdict, when the queſtion is made *de facto*, as where the matter was done, when, by whom, &c.

CHAP.

CHAP. XVI.

Of the two manner of Iſſues.

IF the queſtion bee of the Law, that is, if both the parties doe agree upon fact, and each doe clayme that by Law hee ought to have it, and will ſtill in that ſort maintaine their right, then it was called a Demurrer in Law, where if in the Law the caſe ſeeme to the Iudges that ſit, doubtfull, it is called a Checker chamber caſe, and all the Iudges will meete together, and what they ſhall pronounce to be the Law, that is held for right, and the other party looſeth his Action or Land for ever. If the Sergeants or Counſellors doe ſtand upon any point in the Law which is not ſo doubtfull, the Iudges who be taken for moſt expert, bids him goe forward, and if he hath no other to ſay, but ſtandeth upon that point of the Law, that bidding goe forward,

But ſometimes it is determined by the ſame Court only.

This ſhould be meant of a reſponder ouſter, when the opinion is againſt him that taketh an exception, which is not peremptory he may deny it by proteſtation.

forward, is taken that hee looseth his action, and the Defendant is licensed to depart without a day: and this is where the issue or question is of the Law or *Iuris*. So is that case where the Law is not doubtfull, according to the matter contained in the Declaration, Answer, Replication, Rejoynder, or Triplication, the Iudge out of hand decideth it. And it is the manner that each party must agree to the other still in the fact which he cannot deny. For if hee once come to deny any deed as not done, not his writing, that the man by whom the Adversary claimeth, was not the Adversaries Ancestor, or the evidence which the Adversary bringeth, is not true, or that his gift was former, or any such like exception, which is availeable to abate the Action, or barre the party, and the other joyneth in the affirmative, and will averre and prove the same, this is called the issue and immediatly all question of the Law ceaseth

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as agreed by both the parties, that there is no queſtion in the Law. Then as the iſſue *facti* is found by the twelve men of whom wee ſhall ſpeake hereafter, ſo the one party or other looſeth his cauſe and Action: ſo that contrary to the manner of the civill Law, where firſt the fact is examined by witneſſes, Indices, Torments, and ſuch like Probations to finde out the truth thereof, and that done, the Advocates doe diſpute of the Law, to make of it what they can: ſaying, *ex facto jus oritur.* Here the Sergeants or counſellours before the Iudges doe in paſſing forward with their pleading, determine and agree upon the Law, and for the moſt part, and in a manner all Actions, as well criminall as civill, come to the iſſue and ſtate of ſome fact which is denied of the one party, and averred of the other, which Fact being tried by the twelve men, as they find, ſo the Action is wonne or loſt.

loſt. And if a man have many peremptory Exceptions (peremptory Exceptions I call onely thoſe which can make the ſtate and iſſue) becauſe the twelve men bee commonly rude and ignorant, the party ſhall bee compelled to chooſe an Exception whereupon to found his iſſue, which choſen, if he faile in that by the Verdict of twelve men, he looſeth his Action and cauſe, and the reſt can ſerve him for nothing.

Having ſeene both in France and in other places many Deviſes, Edicts and Ordinances, how to abridge Proceſſe, and to finde how that long Suites in Law might be made ſhorter, I have not perceived nor read, as yet, ſo wiſe, ſo juſt, and ſo well deviſed a meane found out as this, by any man among us in Europe.

Truth it is, that where this fashion hath not beene uſed and to them to whom it is new, it will not be ſo eaſily underſtood, and therefore

forethey may peradventure bee of contrary iudgement: but the more they doe weigh and consider it, the more reasonable they shall find it.

How the Issue, Question, or *status juris* is decided, I have told: now I will shew how it is tried, when it doth come to the Question, State, or Issue of the Deed.

And first I must speake more largely of the manner of proceeding in the Processe, and of such persons as be necessary for the execution thereof.

CHAP. XVII.

Of the Sheriffe of the shire, and of the Court of Exchequer.

THe Romanes had to execute the commandements of the Magistrates, *Lictores*, *Viatores*, *Accensos*. The civill Law since

Seats in ancient Saxon is that which we by a borrowed terme call treasure, whereof is derived Scacarium, signifying a Court dealing with the Kings treasure or revenues, and also Escaetor, that is an Officer which imployeth the Kings profit.

that

that time hath other names, termes, and officers. The execution of the commandements of the Magistrates in England, is ordinarily done by the Sheriffes. The Sheriffe (which is as much to say as the Reeue or Bayly of the Shire) is properly word for word *Quæstor Provinciæ*, it is he which gathereth up and accounteth for the profits of the shire, that come to the Exchequer.

The Exchequer (which is *Fiscus Principis*, or *erarium publicum*, and I cannot tell in what language it is called *Scaccarium*, some thinke it was first called *staterium*, becauſe that there was the ſtable place to account for the reuenues of the crowne, aſwell that which came of patrimony, which we call the demeaſnes, as that which commeth of other incident requiſitions, be they rents, cuſtomes, tenthes, quinzieſmes, taxes, ſubſidies wherſoeuer the Prince or his court be according to the time and occaſion) was a place ſtable, continuall,

and

and appointed for to reckon and account. The hearers of the account (who in Latine may be called *tribuni erarij*) have auditors under them; which the Latines doe call *Rationales*, but they are the chiefe for the accounts of the Prince, and may be called *juridici rationales*, in Englisſh we call them Barons, of the Exchequer, whereof is one who is called the chiefe Baron, as *Tribunus*, or *Iuridicus Rationalis primus*, or *princeps*, with others to them aſſiſtant: Chancellor of the Exchequer, two chamberlaines, and Atturney generall. The chiefe of all is called high treaſurer of England, as you would ſay in Latine, *Supremus erarij Anglici quaſtor*, or *Tribunus erarius maximus*.

He hath the charge and keeping of the King or Queenes treaſure, and many Officers are at his ſole appointment and to him accountant, as well in the Tower, Exchequer, as elſewhere, as Auditors

in

in the Mint, Auditors and tellers in the Exchequer, Receivers. &c.

The Chancellour is the under treasurer, and is gouernour of the court, under the high treasurer. Many Officers also are at his appointment.

The chiefe Baron is the Iudge in Lavv-causes, incident to this court, the three other Barons assistants.

The Atturney is the Atturney generall, to defend the Kings right, and to peruse all grants, particulars, suits and causes handled in this court. There are common Atturneyes besides, which serve for the suiters of this court.

The other Officers are two Remembrancers, tvvo clarkes of the Pipe, two of the first fruits and tenthes.

The Remembrancers are those which keepe all the Records of the Exchequer betweene the King and his subjects, and enter the rules and orders there made, the one is for

the

the Prince, the other is for the Lord treasurer.

The clarkes of the Pipe are those that make leases upon particulars, and receive the Sheriffes accounts, those receive also the bonds and titles of other assurances.

In the Office of the first fruits, are receiued all first fruits due to his Maiesty by Bishops, Deanes, and all Ecclesiasticall Persons, answerable by order of the law. Other officers are tellers, Auditors, collectors, rent-gatherers, taiiemakers.

The matters of this court are all punishments as intrusions, alienations without licence, penall, forfaitures upon popular actions (a popular action is while one part is given to the informer, the rest to the Prince.) Of these see the whole body of Statutes at large in *Rastalls* collection.

In this court are handled all paiments, accounts, expences of the Kings revenues.

The usuall Processe of this court

is

is a *Subpæna* out of this court, as a messenger to call the party.

In this court be heard *Quadruplatores*, which we call promoters, which be those that in popular and penall actions be *delatores*, having thereby part of the profit by the law assigned. In this court if any question be, it is determined after the order of the common law of England by the twelve men, as I have said, and all customers which were in Latine called *Publicani*, in Greeke *Telonai*, do account in this Office.

The Sheriffe of the shire is called in our common Latine *Vicecomes*, one would say, *Vicarius comitis*, *Procomes*, doing that service, to attend upon the execution of the commandements of the Tribunals or Iudges which the Earle or countie should doe: which Earle or county for the most part was attending upon the Prince in the warres, or otherwise about the Prince, as the word beareth *comes Principis*:

Principis: wherby it may appeare, that the chiefe Office of the county or Earle, was to ſee the Kings juſtice to have courſe, and to be well executed in the ſhire or county, and the Princes revenues well anſwered and brought in *erarium principis*, which is called of the treaſurie.

If any fines or amercements, which in Latine be called *Multa*, be levied in any of the ſayd courts, upon any man, or any arrerages of accounts by the Latines called *reliqua*, of ſuch things as is of cuſtomes, taxes, Subſidies, or any other ſuch occaſions, the ſame the Sheriffe of the Shire doth gather, and is reſpondent therefore in the Exchequer, As for other ordinary Rents of Patrimoniall lands, and moſt commonly for the taxes, cuſtomes, and ſubſidies, there be particular receivers and collectors which doe anſwere it into the Exchequer. The Sheriffe hath under him an under Sheriffe at his charge and appointment, lear-

learned ſomewhat in the law, e
ſpecially if hee bee not learned him
ſelfe, and divers Bayliffes which b
called Errants, whom he makes a
his pleaſure, who can know eac
land and perſon in the ſhire, an
their ability to goe upon enqueſt
either to diſtraine, or to ſummo
him to appeare whom the Sheriff
ſhall appoint, and for this cauſe t
the Sheriffes, as to the Miniſter mo
proper of the Law, the Writs be di
rected.

When any thing commeth to a
iſſue of the deed or fact, there is
Writ and writing directed to th
Sheriffe of the ſhire where the lan
is, whereupon the controverſies, o
where the man dwelleth of whom
the money is demanded, which wri
is called *venire facias*. Then after
the ſame effect an *alias*, *pluries*, o
diſtringas, according to the nature
of the action to the returne of th
Sheriffe. And if for any diſobedi
ence of not comming and appearing
there be a fine (which the Latines
doe

doe call *Mulcta*) ſet upon any Iurors head, the Sheriffe is charged with it, and taketh the diſtreſſes which in Latin are called *Pignora*, and anſwereth therefore to the Exchequer. The Sheriffe is alſo ready by himſelfe or by his under-Sheriffe, to ſerve as well the Iuſtices of peace in their quarter Seſſions, as the Iuſtices called *Itinerantes* in their great Aſſizes, when they come into the Shire, which is twice in the yeare to diſpatch and void actions criminall and civill depending at the common law, and which be come now to the iſſue. He hath alſo the charge of all priſoners committed to the priſon which we call the Goale, and when any is condemned to dye, it is his charge to ſee the ſentence executed. To be ſhort, he is as it were the generall miniſter and higheſt for execution of ſuch commandements, according to the Law, as the Iudges ordaine, and this is enough for the Sheriffe.

CHAP. XVIII.

Of the twelve men.

OF what manner and order of men in the common-wealth the twelve men be, I have already declared. The Sheriffe alwayes warneth foure and twenty to appeare, leſt Peradventure any might be ſicke or have a iuſt cauſe of abſence. and if there be not enow to make an enqueſt: the abſents be amerced. For although they be called twelve men, as a man would ſay *duodecim viri*, yet if they be twelve, twenty, or the whole number of foure and twenty, that is no matter, twelve they muſt be at leaſt to make an enqueſt, or as ſome call it a queſt. An enqueſt or queſt is called this lawfull kind of tryall by twelve men. In actions civill, which is either of contracts or for land, or poſſeſſion, when ſo many of thoſe that be warned appeare

peare at the call, as be able to make an enqueſt, which as I ſayd before be no leſſe then twelve, either part when they be come taketh their challenges againſt ſo many of them as they will, which bee, that he may not ſpend ſo much land a yeere, he is allied, fee'd, ſervant to his adverſe party, he is his enemie, &c. And two of the whole number do try, and allovv or diſallovv the reſt.

If after exceptions, there be ſo many reiected that there is not a full enqueſt in ſome caſes that day is loſt. in ſome the enqueſt is filled *ex circumſtantibus*: when the queſt is full, they be ſworne to declare the truth of that iſſue, according to the evidence, and their conſcience. Then the Sergeants of either ſide declare the iſſue, and each for his clyent ſaith as much as he can. Evidences of writings be ſhewed, vvitneſſes be ſworne, and heard before them, not after the faſhion of the civill Law but onely that

not onely the twelve but the judges, the parties, and as many as be present may heare what each vvitnesse doth say: The aduerse party or his advocates which we call Counsellours and Sergeants, interrogateth sometime the witnesses, and driveth them out of countenance.

Although this may seeme strange to our Civillians now, yet who readeth *Cicero* and *Quintilian* vvell shall see, that there was no other order and manner of examining vvitnesses, or deposing among the Romanes in their time. When it is thought that it is enough pleaded before them, and the vvitnesses have sayd what they can, one of the judges with a briefe and pithie recapitulation reciteth to the twelve in summe the arguments of the Sergeants of either side, that vvhich the witnesses have declared, and the chiefe points of the evidence shevved in writing, and once againe putteth them in minde of the issue, and sometime giueth it them in writing,

writing, delivering to them the evidence which is ſhewed on either part, if any be, (evidence here is called writings of contracts, authenticall after the manner of England, that is to ſay, written, ſealed, and delivered) and biddeth them goe together.

Then there is a Bayliffe charged with them to keepe them in a chamber not farre off, without bread, drinke, light, or fire: untill they be agreed; that is, till they all agree upon one verdict concerning the ſame iſſue, and upon one among them who ſhall ſpeake for them all when they be agreed: for it goeth not by the moſt part, but each man muſt agree. They returne, and in ſo few words as may be, they give their determination: few I call ſix, or ſeven, or eight words at the moſt (for commonly the iſſue is brought ſo narrow, that ſuch number of words may be enough to affirme or to deny it) which done they are diſmiſſed to goe whither

they will. The party with whom they have given their ſentence, giveth the enqueſt their dinner that day moſt commonly, and this is all they have for their labour, notwithſtanding that they come, ſome twentie, ſome thirtie, or fortie miles or more, to the place where they give their verdict, all the reſt is of their owne charge. And neceſſarily all the whole twelve muſt be of that ſhire and foure of them of the hundred where the Land lieth which is in controverſie, or where the partie dwelleth who is the defendant.

Chap. XIX.

Of parts of Shires called Hunareds, Laths, Rapes, Wapentakes.

An Hundred, or Lath, Rape, or Wapentake is called of the diviſions or parts of Shires, in divers countries diverſly named, after

after the manner and language of each Countrie. For the ſhires be divided, ſome into ten, twelve, thirteene, ſixteene, twenty or thirtie Hundreds, more or leſſe, either that they were at the firſt a Hundred Townes and Villages in each Hundred: and although now they bee but ſixteene, twenty, thirty, forty, fifty, threeſcore, more or leſſe, yet is ſtill called an Hundred: or elſe there were but ſo many at the firſt as be now, or a few more or leſſe, and they did find the King to his warres an hundred able men. Lath, and Rape I take to be names of ſervice, for that ſo many Townes in old time and in the firſt povertie of the Realme did meete together in one day to carry the Lords corne into his Barne, which is called in old Engliſh a Lath. Or that they met at commandement of the Lord to reape his corne.

Wapentake I ſuppoſe came of the Danes, or peradventure of the Saxons. For that ſo many townes

came by their order then to one place, where was taken a muſter of their Armour and weapons, in which place from them that could not find ſufficient pledges for their good abearing, their weapons were taken away: weapon or weapon in old Engliſh doe ſignifie all Armes offenſive, as ſword, dagger, ſpeare, lance, bill, bowes, arrowes.

Of that place where muſters were taken, or where the ſayd ſervices were done, the Hundreds, Lathes, Rapes, & Wapentakes, had and have yet their names, which be moſt commonly good townes, and it is to be thought at the firſt they were all ſuch. But ſometime now in places whereof the Hundred hath the name, no mention nor memory of a towne remaineth: ſuch mutation time bringeth with it of all things. A Hundreth hath one or two high Conſtables, who have ſome authority over all the lower and particular Conſtables. Thoſe high Conſtables be made by the

Iuſtices

Iuſtices of the peace of the ſhire, and each hundred hath his Bayliffe who is made by the Lord, if any hath that liberty, or elſe by the Sheriffe of the ſhire for the time being.

CHAP. XX.

Of the Court Baron.

IT may appeare ſtrange that of thirty ſix ſhires, whereof each ſhire is divided into divers Hundreds, each Hundred containing divers Pariſhes, all pleading ſhould be but in one place, that is, in Weſtminſter Hall, and that but in certaine times of the yeare, making little more then one quarter of the yeare in the whole. And one would thinke that there ſhould be much lacke of Iuſtice and right, and much wrong taken without redreſſe. But it is not ſo: the people being accuſtomed to live in ſuch an equalitie of Iuſtice, and in ſuch ſort, that the

rich hath no more advantage therein than the poore, the Proceſſe and proceeding to the iudgement being ſo ſhort, and iudgements alſo being peremptory and without appellation: yet to helpe for ſmall matters where no great ſumme is in queſtion, there are other Courts. In every Shire from three weekes, to three weekes, the Sheriffe for ſmall things not paſſing forty ſhillings; and in certaine Hundreds and liberties the Bayliffe likewiſe from three weekes to three weekes holdeth Plea. And whoſoever is poſſeſſioner and owner of a Mannor, may hold from three weekes to three weekes, or at his pleaſure, of his Tennants, and among his Tennants, a court called a court Baron; and there his Tennants, being ſworne make a jury, which is not called the enqueſt, but the homage. Theſe principally doe enquire of the copy-holders and otherfree-holders that be dead ſince the laſt Court, and bring in their heires

heires and next ſucceſſours, and likewiſe of incroachment or intruſion of any of the Tennants againſt the Lord, or among themſelves. They make orders and Lawes amongſt themſelves, the paine of them if they be after broken, commeth to the Lord. And if any ſmall matter be in controverſie, it is put to them, and commonly they doe end it. But theſe Courts doe ſerve rather for men that can be content to be ordred by their neighbours and which love their quiet and profit in their husbandry more then to be buſied in law. For whether party ſoever will, may procure a writ out of the higher Court, to remoove the Plea to Weſtminſter.

In Cities and other great townes there be diverſ liberties to hold Plea for a bigger ſum, which doe determine as well as the Common Law and after the ſame manner, and yet for them that will it may be removed to Weſtminſter Hall.

King

King *Henry* the eight ordained firſt a Preſident, Counſellours, and Iudges, one for the Marches of Wales, at Ludlow, or elſe where: another for the North parts of England, at Yorke, where be many cauſes determined. Theſe two are as be Parliaments in France. But yet if there be any matters of great conſequence, the party may move at the firſt, or remoove it afterwards to Weſtminſter Hall, and to the ordinary Iudges of the Realme; or to the Chancellor, as the matter is.

Theſe two Courts doe heare matters before them part after the common Law of England, and part after the faſhion of the Chancery.

CHAP. XXI.

Of the Leet or Law day.

LEet, or Law-day is not incident to every Mannor, but to thoſe onely

onely which by ſpeciall grant, or long preſcription, have ſuch liberty. This was, as it may appeare, firſt a ſpeciall truſt and confidence and Commiſſion given to a few put in truſt by the Prince, as is now to the Iuſtices of peace, to ſee men ſworne to the Prince, to take Pledges and Sureties in that manner of one for another to anſwere for obedience and truth, to enquire of privie Conſpiracies, Frayes, Murders, and Bloudſhed, and to this was added the over-ſight of Bread and Ale, and other Meaſures. Many times they that be out of the homage and Court Baron of that Mannor and Lordſhip, be nevertheleſſe reſtrained and anſwerable to come to the Leet. This Leet is ordinarily kept but twice in the yeere, and that at termes and times preſcribed.

The Leet and Law-day is all one, & betokeneth word for word, *Legitimum*, or *juridicum diem*. Law the old Saxons called *Lant* or *lag*, or ſo by corruption and chang-

ing

ing of Language from *Lant* to *Leet*, understanding day, they which keep our full English terme, call it yet Law-yad.

CHAP. XXII.

Of the proceedings of Causes Criminall, and first of the Iustices of the Peace.

BEfore the manner of proceeding in causes Criminall can be well understood, it will be necessary to speake of three persons, the Iustices of Peace, the Coroners and Constables. The Iustices of Peace be men elected out of the Nobilitie, higher and lower, that is the Dukes, Marquesses, Barons, Knights, Esquires and Gentlemen, and of such as be learned in the Lawes such, & in such number as the Prince shall thinke meet, and in whom for wisedome and discretion he putteth his trust, inhabitants within the Coun-

tie:

tie: ſauing that ſome of the high Nobilitie and chiefe Magiſtrates for honours ſake are put in all, or in moſt of the Commiſſions of all the Shires of England. Theſe have no time of their rule limited, but by Commiſſion from the Prince, alterable at pleaſure.

At the firſt they were but foure, after eight, now they come commonly to thirty or forty in every Shire, either by increaſe of riches, learning, or activity in policy and government. So many more being found, which have either will, or power, or both, are not too many to handle the affaires of the Commonwealth in this behalfe. Of theſe in the ſame Commmiſſion be certaine named, which be called of the *Quorum*, in whom is eſpeciall truſt repoſed, that where the Commiſſion is given to forty or thirty, and ſo at the laſt it commeth to foure or three, it is neceſſary for the performance of many affaires to have likewiſe divers of the *Quorum*. The words of Com-

Commission be such. *Quorum vos* A B C D. E F. *vnum esse volumus.*

The Iustices of the Peace be those in whom at this time for repressing of Robbers, theeves & Vagabonds, of privy complots and conspiracies, of Riots, and violences, and all other misdemeanours in the Commonwealth, the Prince putteth his speciall trust. Each of them hath authoritie vpon complaint to him of any Theft, Robbery, Man-slaughter, Murder, Violence, Complots, Riots, unlawfull Games, or any such disturbance of peace and quiet of the Realme, to commit the persons whom he supposeth offenders, to prison, and to charge the Constable or Sheriffe to bring them thither, the Goaler to receive them, & keepe them till hee and his fellowes doe meete. A few lines signed with his hand is enough for that purpose: these doe meete foure times in the yeare, that is in each quarter once, to enquire of all the misdemeanours aforesaid: at which dayes the Sheriffe

riffe or his under-ſheriffe with his Bailiffs, be there to attend upon him, who muſt prepare againſt that time foure enqueſts, & foure and twenty Yeomen a piece, of divers hundreds in the ſhire, & beſides one which is called the great Enqueſt out of the body of the Shire mingled with all. Theſe five Enqueſts are ſworne before them to enquire of all Heretiks, Traytors, Theſts, Murthers, Manſlaughters, Rapes, falſe Moniers, extortioners, Riots, Routs, forcible Entries, unlawfull Games, and all ſuch things as be contrary to the Peace & good order of the Realm, & to bring in their verdict. If they among themſelves upon their owne knowledge doe find any culpable, they cauſe one of the Clarks to make the Bill. And if any be there to complaine upon any man for theſe faults, he putteth in his Bill, which Bill is preſented firſt to the Iuſtices ſitting upon the Bench, to ſee if it be conceived in forme of law, which done the complainant doth deliver it to one

This is not alwayes and in all places obſerved but onely concerning the graund Enqueſt.

of

of these Enquests, and after the complaint is sworne, he declareth to them what he can, for the proofe of it. And if they find it true, they doe nothing but write on the backside of it, *billa vera*, as ye would say, *scriptum verum*, or *accusatio iusta*, or *reus est qui accusatur*: Then he who is there named is called indicted. The manner of the Bill is such, *Inquiratur pro Domino Rege*.

If they do not find it true, they write on the backside *Ignoramus*, and so deliver it to the Iustices, of whom it is rent in pieces immediatly: he that is indicted is accounted a lawfull prisoner, and after that time looked more straitly unto. For this indictment is no conviction: and if he be indicted, and be not already in prison, the Sheriffe if he can find him, bringeth him into prison: if he cannot find him, processe is made out against him, to render himselfe prisoner, or else he shall be out-lawed. So he is called three times in divers countie

tie dayes to render himſelfe to the Law. The fourth is called the Exigent, by which he is outlawed not rendring himſelfe, as ye would ſay: *exactus* or *actus in exilium*. The Out-law looſeth all his goods to the King for his diſobedience. But if after he will render himſelfe to anſwer to the Law, and ſhew ſome reaſonable cauſe of his abſence, many times of grace his out-lawry is pardoned. Theſe meetings of the Iuſtices of Peace foure times in the yeare, be called quarter Seſſions, or Seſſions of enquiry, becauſe that nothing is there determined touching the Malefactors, but only the cuſtody of them: and this kind of proceeding which is by inquiſition of the twelue men within themſelves, and their owne conſciences, or by denunciation of him that putteth in his Bill to the twelve, is called at the Kings ſuit, and the King is reckoned the one party, and the priſoner the other. The Iuſtices of the Peace do meet alſo at other times

by

by commandement of the Prince upon ſuſpition of warre, to take order for the ſafety of the Shire, ſometimes to take muſters of Harneſſe and able men, and ſometimes to take order for the exceſſive wages of ſervants and labourers, for exceſſe of apparell, for unlawfull Games, for Conuenticles and evill order in Alehouſes and Tavernes, for puniſhment of idle and Vagabond perſons, and generally as I have ſaid for the good government of the Shire, the Prince putteth his confidence in them. And commonly every yeare, or each ſecond yeare in the beginning of Summer or afterwards, (for in the warme time the people for the moſt part be more unruly) even in the calme time of Peace, the Prince with his Councell chooſeth out certaine Articles out of penall Lawes already made for to repreſſe the pride and evill rule of the popular, and ſendeth them downe to the Iuſtices, willing them to looke upon thoſe points, and after they have met

met together, and conſulted among themſelves, how to order that matter moſt wiſely and circumſpectly, whereby the people might be kept in good order and obedience after the Law, they divide themſelves by three or foure: and ſo each in his Quarter taketh order for the execution of the ſaid Articles.

And then within certaine ſpace they meet againe and certifie the Prince or his Privy Councell, how they doe find the Shire in rule and order touching thoſe points, and all other diſorders. There was never in any Common-wealth deviſed a more wiſe, a more dulce and gentle, nor a more certaine way to rule the people, whereby they are kept alwayes as it were in a bridle of good order, and ſooner looked unto that they ſhould not offend then puniſhed when they have offended. For ſeeing the chiefe amongſt them, their Rulers have this ſpeciall charge, and do call upon it, and if occaſion ſo do preſent, one or two preſently are either

ther puniſhed, or ſent to priſon fo
diſobedience to thoſe old Orde
and Lawes, they take a fear re with
themſelves, they amend, and do pro
miſe more amendment. So that it i
as a new furbiſhing of the goo
Lawes of the Realm, and a contin
all repreſſing of Diſorders, which
do naturally reſt among men.

But as the invention of this, an
the uſe and execution thereof is th
moſt benefit that can be deviſe
for the Common-wealth of Eng
land: ſo when it ſhall be miſuſed,
diſſembled with, or be condemned,
and be done *pro forma tantum*, and
as they terme it in France, *Pour
mainere d'acquit* only, it will be
the preſent ruine (though not at the
firſt perceived) of the Common-
wealth. Of which the fault may be
as well in the Commanders for not
making good choice, what, and how
they command, as in the comman-
ded, for not executing that which is
commanded.

CHAP.

CHAP. XXIII.

Of Hue and Cry, and recogniſance taken upon them that may give evidence.

BY the old Law of England, if any theft or robbery be done, if he that is robbed, or he that ſeeth or perceiveth that any man is robbed, do levie Hue and Cry, that is to ſay, do cry and call for ayd, and ſay that a theft or Robbery is done contrary to the Princes peace and aſſurance: the Conſtable of the Village to whom hee doth come, and ſo make that cry, ought to raiſe the Pariſh to ayde him, and ſeeke the thiefe, and if the thiefe be not found in that Pariſh, to goe to the next, and raiſe that Conſtable, and ſo ſtill by Conſtables and them of the Pariſh one after another. This Hue and Cry from Pariſh to Pariſh is carried till the thiefe or robber be found.

That

That Pariſh which doth not his du-tie, but lets by their negligence the thiefe to depart, doth not only pay a fine to the King, but muſt repay to the party robbed his dammages. So that every Engliſh man is a Ser-geant to take the thiefe, and who ſheweth himſelfe negligent there-in, do not only incurre evill opini-on therefore, but hardly ſhall e-ſcape puniſhment: what is done with the thiefe or robber when he is taken, I ſhall ſhew you hereafter. The ſame manner is followed if any man be ſlaine, for ſtraight the mur-therer is purſued of every man till he be taken. So ſoone as any is brought to the Iuſtices of Peace by this Hue and cry, by the Conſtable, or any other who doth purſue the malefactor, he doth examine the malefactor, and writeth the exami-nation, and his confeſſion: then he doth bind the party that is robbed, or him that ſueth, and the Conſtable and ſo many as can give evidence a-gainſt the malefactor to be at the

next Seſſions of Goale delivery, to give their evidence for the King. He bindeth them in Recogniſance of ten pound, twenty pound, thirty pound, forty, or an hundred pound, according to his diſcretion, and the quality of the crime, which certified under his hand, is levied upon the Recogniſance, if they faile of being there.

CHAP. XXIV.

Of the Coroner.

BVt if any Man, Woman, or child, be violently ſlaine, the murtherer not knowne, no man ought or dare bury the body before the Coroner hath ſeene it. The Coroner is one choſen by the Prince of the meaner ſort of Gentlemen, and for the moſt part a man ſeene in the Lawes of the Realme, to execute that office. And if the perſon ſlaine (ſlaine I call here, whoſoever he be,

Man, Woman, or child, that violently commeth to his death, whether it be by knife, poyſon, cord, drowning, burning, ſuffocation, or otherwiſe, be it by his owne fault, or default, or by any other) if (I ſay) the perſon ſlaine be buried before the Coroner doe come (which for the moſt part men dare not do) he doth cauſe the body to be taken up againe, and to be ſearched, and upon the ſight of the body ſo violently come to his death, he doth empannell an Enqueſt of twelve men or moe, of thoſe which come next by, be they ſtrangers or inhabitants, which upon their oathes, and by the ſight or view of the body, and by ſuch informations as they can take, muſt ſearch how the perſon ſlaine came to his death, and by whom as the doer or cauſe thereof. Theſe are not encloſed into a ſtrait place, (as I told before of other Enqueſts) but are ſuffered to goe at large, and take a day, ſometime after twenty or thirty dayes,

more

more or leſſe, as the fact is more evident, or more kept cloſe, to give their evidence at which day they muſt appeare there againe before the ſayd Coroner to give their verdict. So ſometime the perſon to have ſlaine himſelfe, ſometime the brother, the husband, the wife, the ſiſter, ſome of acquaintance or ſtranger, ſuch as God will have revealed, be taken. For whoſoever they doe find as guiltie of the murther, he is ſtraight committed to priſon, and this is againſt him in the nature of an inditement, which is not a full condemnation, as ye ſhall ſee hereafter.

The empanelling of this Enqueſt, and the view of the body, and the giving of the Verdict, is commonly in the ſtreet in an open place, and in *Curia Populi:* but I take rather that this name commeth becauſe that the death of every ſubject by violence is accounted to touch the Crowne of the Prince, and to be a detriment unto it, the Prince

accounting that his ſtrength, and power, and Crowne doth ſtand and conſiſt in the force of his people, and the maintenance of them in ſecurity and peace.

CHAP. XXV.

Of the Conſtables.

THeſe men are called in the elder books of our lawes of the Realme *Cuſtodes pacis*: and were at the firſt in greater reputation than they be now. It may appeare there was a credit given unto them, not altogether unlike to that which is now giuen to the Iuſtices of peace. To this day if any affray chance to be made, the Conſtables ought and will charge them that be at debate, to keepe to the Princes peace, and whoſoeuer refuſeth to obey the Conſtable therin, all the people will ſet ſtraight upon him, and by force make him to render himſelfe to be orde-

ordered. Likewiſe if any be ſuſpected of theft, or receiving, or of murther, or of man-ſlaughter, the Conſtable may take ſuch perſons, yea enter into any mans houſe with ſufficient power, to ſearch for ſuch men till he find them: and if he ſee cauſe, keepe the ſuſpected perſons in the ſtocks, or cuſtody, till he bring them before a Iuſtice of the Peace to be examined. But for ſo much as every little Village hath commonly two Conſtables, and many times Artificers, Labourers, and men of ſmall ability be choſen unto that office, who have no great experience, nor knowledge, nor authority: the Conſtables at this preſent (although this they may doe upon their owne authority) yet they ſeeme rather to be as it were the executors of the commandement of the Iuſtices of Peace. For the Iuſtice of Peace as ſoone as he underſtandeth by complaint that any man hath Stollen, Robbed, ſlaine; or any ſervant, or labourer without licence, hath de-

One or two Conſtables Headborowes or Tithingmen.

parted out of his Masters service, or any that liveth idle and suspectedly, knowing once in what Parish he is, he writeth to the Constable of the Parish, commanding him in the Princes name, to bring that man before him: The Constable dareth not disobey. The man is brought and examined by the Iustice, and if the Iustice doe finde cause, he committeth him to the same Constable to convey him further to the Princes Goale, where the party must lye, till the Iustices of Peace do meete either at their quarter Sessions, or at their Goale delivery, and that the law hath either condemned or acquitted him. These Constables are called in some places Headborowes, in some places Tithingmen, and belike to them who are called Consuls in many Townes and Villages in *France*. The Constables are commonly made and sworne at the Leets of the Lords, chosen there to be thy homage, and they keepe that office sometime two, three, or foure

foure yeares, more or leſſe, as the Pariſh doth agree. What Headborough doth betoken, it is eaſily knowne, our language doth declare him as the head or chiefe of the Borough or Village: likewiſe Tithing man is the chiefe of the tithing. Conſtable ſeemeth to come of our old Engliſh word *Kinning*, which is *Kinningſtable*, as ye would ſay, a man eſtabliſhed by the King, for ſuch things, as appertaine to pleas of the Crowne, and conſervation of the Kings peace, and as I ſayd at the firſt, were in ſome more reputation, approching to that authority, which the Iuſtices of peace now do hold.

Kinningſtable is Regis virgula, the Kings rod or wand, ſignifying the Kings power or authority, a repreſentation wherof is the uſe of maces & white ſtaues by officers in the Common wealth.

CHAP. XXVI.

Of the Seſſions of Goale delivery, and the definitive proceedings in cauſes criminall.

HOw theeves and murtherers, and other malefactors againſt

the Crowne and Peace, are taken and brought into hold to answer to justice, partly by Hue and cry, partly by information, and partly by the diligence of the Justices of Peace and the Constables: and how at the quarter Sessions they be indicted, or else by the Coroners, yee have heard before. Enditement (as ye may perceive by that which is also gone before) is but a former judgement of twelve men which be called enquirers, and no definitive sentence, but that which in Latine is called *Præjudicium*, it doth but shew what opinion the country hath of the malefactor: and therefore commonly men be indicted absent, not called to it, nor knowing of it. For though a man be indicted, yet if when he come to the arrainment, there be no man to pursue further, nor no evidence of witnesse or other tryall and *Indices* against him, he is without difficulty acquitted. No man that is once indicted can be delivered without arraign-

ment:

ment: For as twelve have given a prejudice againſt him, ſo twelve againe muſt acquit or condemne him. But if the priſoner be not indicted, but ſent to priſon upon ſome ſuſpitious behaviour, and none doe purſue him to the judgement, firſt being proclaimed thus, A. B. priſoner ſtandeth here at the barre, if any man can ſay any thing againſt him, let him now ſpeak, for the priſoner ſtandeth at his deliverance: If no man doe then come, he is delivered without any further proceſſe or trouble, agreeing firſt with the Gayler for his fees. And theſe bee called acquitted by proclamation. Twice in every yeare, the one is commonly in Lent what time there is vacation from pleading in Weſtminſter Hall, the other is in the vacation in Summer, the Prince doth ſend down into every Shire of England certaine of his Iudges of Weſtminſter Hall, and ſome Sergeants at the Law with commiſſion to heare and determine joyntly with the Iu-

ſtices of the Peace, all matters Criminall, and all priſoners which be in the goales. Theſe Iudges doe goe from ſhire to ſhire till they have done their circuit of ſo many ſhires as be appointed to them for that yeare: at the end of the terme going before their circuit, it is written and ſet up in Weſtminſter Hall on what day and in what place they will be. That day there meeteth all the Iuſtices of the peace of that Shire, the Sheriffe of that Shire, who for that time beareth their charges, and after asketh allowance for it in the Exchequer.

The Sheriffe hath ready for criminall cauſes (as I writ before at the Seſſions of inquirie) foure, five, or ſix Enqueſts ready warned to appeare that day to ſerve the Prince, and ſo many more as hee is commanded to haue ready to goe in ciuill matters betwixt private men, which they call *niſi prius*, becauſe that word is in the writ.

In the Towne-houſe, or in ſome open

open or common place, there is a tribunall or a place of judgement, made aloft upon the higheſt bench, there ſit the Iudges, which be ſent downe in commiſſion, in the midſt. Next them on each ſide ſit the Iuſtices of peace, according to their degree. On a lower bench before them, the reſt of the Iuſtices of Peace, and ſome other Gentlemen, or their Clarks. Before theſe Iudges and Iuſtices there is a Table ſet beneath, at which ſitteth the *Cuſtos Rotulorum*, or keepe of Writs. *Th'eſchetor*, the vnder-ſheriffe, and ſuch Clarks as doe write. At the end of that Table there is a Barre made with a ſpace for the Enqueſts, and twelue men to come in when they are called, behind that ſpace another Barre, and there ſtand the priſoners which bee brought thither by the Gayler, all chayned one to another. Then the Cryer cryeth, and commanderh ſilence. One of the Iudges briefly telleth the cauſe of their comming,

and

and giueth a good leſſon vnto the people. Then the priſoners are called for by name and bidden to anſwere to their names. And when the *Cuſtos Rotulorum* hath brought forth their indictments, the Iudges do name one or two, or three of the priſoners that are indicted, whom they will haue arraigned. There the Clarke ſpeaketh, firſt to one of the priſoners: A.B. come to the Barre, hold up thy hand. Then the Clarke goeth on: A.B. thou by the name of A.B. of ſuch a Towne, in ſuch a Country art endicted, that ſuch a day, in ſuch a place, thou haſt ſtolne with force & armes an horſe, which was ſuch ones, of ſuch colour, to ſuch a valour, and carried him a way felloniouſly, and contrary to the peace of our Soveraigne Lord the King. What ſayeſt thou to it, art thou guilty or not guilty? If he will not anſwer, or not anſwer directly guilty or not guilty, after he hath beene once or twice ſo interrogated, he is judged mute,

that

that is, dumbe by contumacie, and his condemnation is to be preſſed to death, which is one of the cruelleſt deaths that may be: he is laid vpon a Table, and another vpon him, and ſo much waight of ſtones or lead laid vpon that table, while as his body be cruſhed, and his life by that violence taken from him. This death ſome ſtrong and ſtout hearted man doth chooſe: for being not condemned for fellony, his blood is not corrupted, his lands nor goods confiscate to the Prince, which in all caſes of fellony are commonly loſt from him and his heires, if he be fore-judged, that is, condemned for a fellon by the law. If he confeſſe the inditement to bee true, then when he is arraigned, no twelue men goe vpon him: there reſteth but the Iudges ſentence of the paine of death.

If he plead not guilty, as commonly all theeues, robbers, and murtherers doe, though they haue confeſſed the fact before the Iuſtice

of

of the Peace that examined them, though they be taken with the manner, which in Latine they call *in flagranti crimine*, howsoever it be, if hee plead there not guiltie, the Clarke asketh him how he will be tried, and telleth him he must say, by God and the Country, for these be the words formall of his tryall after inditement, and where the Prince is party. If the prisoner say so, I will be tryed by God and the Country, then the Clarke replieth. Thou hast beene indited of such a crime, &c. Thou hast pleaded not guiltie, being asked how thou wilt be tried, thou hast answered by God and by the Countrie. Loe these honest men that be come here, be in the place & stead of the Country: and if thou hast any thing to say to any of them, looke vpon them well and now speake, for thou standest vpon thy life and death. Then calleth he in the first juror. *B. C.* come to the Booke, and so he giueth him an oath to go uprightly betwixt the

Prince

Prince and the priſoner, &c. If the priſoner obiecteth nothing againſt him, he calleth another, and ſo another, till there be twelue or aboue: and for the moſt part the priſoner can ſay nothing againſt them, for they are choſen but for that day, and are vnknowne to him, nor they know not him, as I ſaid, being ſubſtantiall Yeomen that dwell about the place, or at leaſt in the Hundred, or neere where the fellonie is ſuppoſed to be committed, men acquainted with daily labour and trauell, and not with ſuch idle perſons as be ready to do ſuch miſchiefes.

When the Enqueſt is full, and the priſoner hath obiected nothing againſt them, as indeed ſeldome he doth, for the cauſe aboue rehearſed: The Clark ſaith to the Crier, *Countes*, (in French as ye would ſay reckon) and ſo nameth all thoſe that be on the Queſt. The Cryer at euery name crieth aloud, one, then two, three, foure, and ſo till the number be full of twelue or more, and then ſaith

ſaith good men and true: and then ſaith aloud: If any can giue euidence, or can ſay any thing againſt the priſoner, let him come now, for he ſtandeth vpon his deliuerance. If no man come in, then the Iudge asketh who ſent him to priſon, who is commonly one of the Iuſtices of Peace: he (if he be there) deliuereth vp the examination which he tooke of him, and vnderneath the names of thoſe whom he hath bound to giue euidence: although the Malefactor hath confeſſed the crime to the Iuſtice of the peace, and that it appeare by his hand and confirmation, the twelue men will acquit the priſoner, but they which ſhould giue euidence pay their Recognizance. Howbeit this doth ſeldome chance, except it be in ſmall matters, and where the Iuſtice of Peace who ſent the priſoner to the Gayle is away. If they which be bound to giue euidence come in, firſt is read the examination, which the Iuſtice of peace doth giue in, then is heard (if he be there) the

the man robbed what he can ſay, being firſt ſworne to ſay the truth, and after the Conſtable, and as many as were at the apprehenſion of the Malefactor: and ſo many as can ſay any thing being ſworne one after another to ſay the truth. Theſe bee ſet in ſuch a place as they may ſee the Iudges and the Iuſtices, the Enqueſt and the priſoner, and heare them, and be heard of them all. The Iudge after they be ſworne, asketh firſt the partie robbed, if he know the priſoner, and biddeth him looke vpon him: he ſaith yea; the priſoner ſometime ſaith, nay. The party Purſuiuant giueth good enſignes, *verbi gratia*, I know thee well enough, thou robbedſt mee in ſuch a place, thou beatedſt me, thou tookedſt my horſe from me, and my purſe, thou hadſt then ſuch a coate, and ſuch a man in thy company: The thiefe will ſay no, and ſo they ſtand a while in altercation, then he telleth all that he can ſay: after him likewiſe all thoſe who were at the apprehenſion of

of the prisoner, or who can give any *indices* or tokens, which we call in our language evidence against the malefactor. When the Iudge hath heard them say enough, he asketh if they can say any more: If they say no, then he turneth his speech to the Enquest, Good men (saith he) ye of the Enquest, yee haue heard what these men say against the prisoner, you haue also heard what the prisoner can say for himselfe, haue an eye to your oath, and to your duty, and do that which God shall put in your mindes to the discharge of your consciences, and marke well what is said. Thus sometime with one Enquest is passed to the number of two or three prisoners. For if they should be charged with more, the Enquest will say, my Lord, wee pray you charge vs with no more, it is enough for our memory. Many times they are charged but with one or two. At their departing, they have in writing nothing giuen them but the indictment, the Clarke repeating to them

them the effect of it, and ſhewing more, that if they find him guiltie, they ſhall inquire what goods, lands and tenements the ſaid perſon had at the time of the fellony committed: and if they find any, they ſhall bring it in: if none, they ſhall ſay ſo. If they find him not guilty, they ſhall enquire whether he fled for the fellony or nō.

And there is a Bailiffe to wait vpon them, and to ſee that no man doe ſpeak with them, and that they haue neither bread, drinke, meate, nor fire brought to them, but there to remaine in a chamber together till they agree. If they be in doubt of any thing that is ſaid, or would heare againe ſome of them that gaue euidence, to interrogate them more at full, or if any that can giue euidence came late, it is permitted that any that is ſworne to ſay the truth may bee interrogated of them to informe their conſciences. This is to be underſtood, although it will ſeeme ſtrange to all nations, that doe uſe the Ciuill

Law

Law of the Romane Emperors, that for life and death there is nothing put in writing but the indictment only. All the reſt is done openly in the preſence of the Iudges, the Iuſtices, the Enqueſt, the priſoner, and ſo many as will or can come ſo neere as to heare it, and all depoſitions and Witneſſes giuen aloud, that all men may heare from the mouth of the depoſitors and Witneſſes what is ſaid. As of this, ſo is it of all other priſoners after the ſame ſort. By that time that the Enqueſts for the priſoners be diſpatched, it is commonly dinner time, the Iudges and Iuſtices goe to dinner; and after dinner doe returne to the ſame place: if the enqueſt be not ready for the priſoners, they goe to ſome other enqueſts of *Niſi prius*, which be ciuill matters and priuate, to driue out the time. The Enqueſts haue no ſooner agreed vpon their charge one way or other, but they tell the Bayliffe, and pray to be heard, and conſidering that they be by themſelues, all this while

as

as priſoners, as I ſaid before, it is no maruaile though they make expedition. The priſoners be ſent for againe to the Barre, the Enqueſt which hath agreed, is called for, each one of the Iury by his name to which he anſwereth. Then the Clarke asketh if they be agreed: and who ſhall ſpeake for them: one or more ſaith yea, he that ſpeaketh for them all is called the fore-man, and commonly it is he that is firſt ſworne: then the priſoner is bidden to hold vp his hand. The Clarke ſaith vnto him: Thou art indicted by the name of *A.* of ſuch a place, &c. being therefore arraigned thou pleadeſt thereto not guilty, being asked how thou wouldſt bee tried, thou ſaidſt, *By God and thy Countrey.* Theſe honeſt men weregiuen to thee by God and thy Prince for thy Country: Hearken what they ſay. Then hee asketh of the Enqueſt, what ſay you? Is he guiltie or not guiltie? The fore-man maketh anſwer in one word, guilty; or in two, not

not guiltie: the one is deadly, the other acquitteth the prisoner. So that neither Iudge nor Iustice hath to doe, or can reuerse, alter, and change the matter: if they say guiltie. The Clarke asketh what Lands, Tenements, or Goods the Prisoner had at the time of the felony committed, or at any time after. Commonly it is answered, that they know not, nor it shall not greatly need, for the Sheriffe is diligent enough to enquire of that, for the Princes and his own aduantage, and so is the Escheatour also.

Of him whom the twelue pronounce guiltie, the Iudge asketh what he can say for himselfe: if hee can read, he demandeth his Clergie. For in many felonies, as in theft of Oxen, Sheepe, Money, or other such things, which bee no open robberies by the high-way side, nor assaulting one by night in his house, putting him that is there in feare, such is the fauour of our Law, that for the first fault the Fel-

lon

lon ſhall bee admitted to his Clergie, for which purpoſe, the Biſhop muſt ſend one with authoritie vnder his Seale to bee Iudge in that matter at euery Goale delivery. If the condemned man demandeth to be admitted to his Booke, the Iudge commonly giueth him a Pſalter, and turneth to what place he will. The Priſoner readeth ſo well, as he can (God knoweth ſometime very ſlenderly,) then he asketh of the Biſhops Commiſſary, *Legit vt Clericus?* The Commiſſary muſt ſay *legit* or *non legit*, for theſe be the words formall, and our men of Law be very preciſe in their words formall. If he ſay *legit*, the Iudge proceedeth no further to ſentence of death: if he ſay *non*, the Iudge forthwith, or the next day proceedeth to ſentence, which is done by word of mouth onely. Thou *A.* haſt beene indicted of ſuch a felony, and therefore arraigned, thou haſt pleaded not guilty, and put thy ſelfe vpon God and thy Coun-

Countrey, they haue found thee guiltie, thou haſt nothing to ſay forthy ſelfe, Law is, thou ſhalt returne to the place from whence thou cameſt, from thence thou ſhalt goe to the place of execution, there thou ſhalt haug till thou bee dead. Then he ſaith to the Sheriffe, Sheriffe doe execution: he that claimeth his Cleargie, is burned forthwith in the preſence of the Iudges, in the brawne of his hand with a hot iron, marked with the letter *T.* for a Thiefe, or *M.* for a Man-ſlayer, in caſes where Clergie is admitted, and is deliuered to the Biſhops Officer to be kept in the Biſhops priſon, from whence after a certaine time by another Enqueſt of Clarkes he is deliuered and ſet at large: but if he be taken and condemned the ſecond time, and his marke eſpied, he goeth to hanging. He whom the Enqueſt pronounceth not guiltie, is acquitted forthwith, and diſcharged of priſon, paying the Gaoler fees.

fees, and if he know any priuate man who purchased his indictment, and is able to pursue it, he may haue an action of Conspiracie against him, and a large amends: but that case chance hfeldome.

CHAP. XXVII.

Certaine orders peculiar to England, touching punishments of Malefactours.

FOr any Felony, Man-slaughter, Robbery, Murther, Rape, and such Capitall Crimes as touch not Treason and *læsam Majestatem*, we haue by the Law of England no other punishment but to hang till they be dead: when they be dead, euery man may burie them that will, as commonly they be: Heading, tormenting, dismembring either arme or legge, breaking vpon the wheele, empailing, and such cruell torments, as be vsed in other na-

tions by the order of the Law, we haue not: and yet as few murthers committed as any where: nor it is not in the Iudges power to aggravate or mittigate the punishment of the Law, but in the Prince onely, and his privy Councell, which is maruellous seldome done. Yet notable murtherers many times by the Princes commandement after they be hanged with cord till they be dead, be hanged with chaines while they rot in the ayre.

If the Wife kill her Husband, she shall be burned aliue. If the seruant kill the Master, he shall be drawn on a hurdle to the place of execution: it is called *petit treason*. Impoisoners, if the person die thereof, by a new Law made in King *Henrie* the Eights time, shal be boiled to death: but this mischiefe is rare, and almost vnknowne in England. Attempting to impoison a man, or laying a waite to kill a man, though hee wound him dangerously, yet if death follow not, it is no fellony by

the

the Law of England, for the Prince hath loſt no man, and life ought to be giuen we ſay for life only.

And againe, when a man is murdered, all bee principalls and ſhall die, euen he that doth but hold the candle to giue light to the Murtherers. For mitigation and moderation of paines, is but corruption of Iudges, as wee thinke. Likewiſe torment or queſtion, which is vſed by the order of the Ciuill Law, and cuſtome of other Countries, to put a Malefactor to exceſſiue paine, to make him confeſſe of himſelfe, or of his fellowes, or complices, it is not vſed in England, it is taken for ſeruile. For how can he ſerue the Common-wealth as a free man who hath his bodie ſo haled or tormented, if he bee not found guiltie, and what amends can bee made him? And if hee muſt die, what crueltie is it ſo to torment him before? Likewiſe, confeſſion by torment is eſteemed for nothing, for if he confeſſe at the judgement, the tri-

all of the twelue goeth not vpon him: if he denie the fact, that which hee said before, hindereth him not. The nature of Englishmen is to neglect death, to abide no torment: And therefore hee will confesse rather to haue done any thing, yea to haue killed his owne father, than to suffer torment: for death our Nation doth not so much esteeme as a meere torment. In no place shall you see malefactors goe more constantly, more assuredly, and with lesse lamentation to their death than in England.

Againe, the people not accustomed to see such cruell torments will pittie the person tormented, and abhorre the Prince and the Iudges, who should bring in such crueltie amongst them, and the twelue men the rather absolue him. There is an old Law of England, that if any Iayler shall put any prisoner being in his custody to any torment, to the intent to make him an approuer, that is to say, an accuser, or *Index* of his complices, the Iayler

shall

shall die therefore as a Felon. And to say the truth, to what purpose is it to vse torment? For whether the malefactor confesse or no, & whatsoeuer hee saith, if the Enquest of twelue doe find him guiltie, he dieth therefore without delay. And the malefactor seeing there is no remedie and that they bee his Countrimen, and such as hee hath himselfe agreed vnto, if they doe find him worthy death, yeelds for the most part vnto it, and doth not repine, but doth accommodate himselfe to aske mercy of God.

The nature of our Nation is free, stout-hault, prodigall of life and bloud: but contumely, beating, seruitude, and seruile torment, and punishment, it will not abide. So in this nature and fashion, our ancient Princes, and *Legislators* haue nourished them as to make them stout-hearted, couragious, and Souldiers, not Villaines and slaues, and that is the scope almost of all our policie.

The twelue as soone as they haue given their Verdict are dismissed to goe whither they will, and haue no manner of commoditie and profit of their labour, and Verdict, but only doe seruice to the Prince and Common-wealth.

CHAP. XXVIII.

Of Treason, and the triall whereof vsed for the higher Nobilitie and Barons.

THe same order touching tryall by Enquest of twelue men in treason, but the paine is more cruell. First, to be hanged, taken downe aliue, his bowels taken out, and burned before his face, then to be beheaded, and quartered, and those set up in diuers places. If any Duke, Marquesse, or any other of the degrees of a Baron, or about Lord of the Parliament be appeached of treason, or any other Capital crime

crime, he is judged by Peeres and equalls: that is, the Yeomanrie doth not go vpon him, but an Enqueſt of the Lords of the Parliament, and they giue their voice, not one for all but each ſeuerally as they doe in Parliament, beginning at the yongeſt Lord. And for Iudge one Lord ſitteth, who is Conſtable of England for that day. The iudgement once giuen, he breaketh his ſtaffe, and abdicateth his office. In the reſt there is no difference from that aboue written.

THE THIRD BOOKE.

CHAP. I.

Of that which in other Countries is called Appellation, or Pronocation, to amend the iudgement of sentence definitive, which is thought vnjustly giuen in causes criminall.

IF the Enquest of twelve men doe seeme to the Iudges and the Iustices to haue gone too violently against the euidence giuen in matters criminall, either it is, that upon slender evidence they haue pronounced him guiltie, whom the Iudges and most part of the Iustices think by the evidence not fully pro-

ued guiltie, or for ſome other cauſe, do thinke the perſon rather worthy to liue than to die, The enqueſt is neuertheleſſe diſmiſſed: but when the Iudges ſhould pronounce the ſentence of death vpon the perſon found guiltie, hee will deferre it, which is called to repriue the priſoner, (that is to ſay, to ſend him againe to priſon) and ſo declare the matter to the Prince, and obtaineth after a time for the priſoner his pardon: and as for prouocation or appeale, which is vſed ſo much in other Countries, it hath no place in England after ſentence giuen by the twelue, whereby the perſon is found guiltie or not guiltie: but, without that repriuing, the ſentẽce is ſtraight put in execution by the Sheriffe. And if they eſcape, or die another death, the Sheriffe eſcapeth not to pay a great fine and ranſome at the Princes mercy: if hauing pregnant euidence, neuertheleſſe, the twelue doe acquit the malefactor, which they will do ſometime, & eſpecially if

if they perceiue either one of the Iuſtices or of the Iudges, or ſome other man to purſue too much, and too maliciouſly the death of the priſoner, and do ſuſpect ſome ſubornation of the witneſſe, or of them which do giue euidence, and ſometime if they perceiue the Iudge would haue the priſoner eſcape, and in repeating the euidence doe giue them thereof ſome watch-word. But if they doe (as I haue ſaid) pronounce not guilty vpon the priſoner, againſt whom manifeſt witneſſe is brought in, the priſoner eſcapeth: but the twelue not only rebuked by the Iudges, but alſo threatned of puniſhment, and many times commanded to appeare in the Starre-chamber, or before the priuie Councell for the matter. But this threatning chanceth oftner then the execution therof, and the twelue anſwere with moſt gentle words, they did it according to their conſciences, and pray the Iudges to bee good vnto them they did as they thought right and as they accorded

all,

all, and ſo it paſſeth away for the moſt part. Yet I haue ſeene in my time (but not in the raigne of the King now) that an enqueſt for pronouncing one guilty of treaſon contrary to ſuch euidence as was brought in, were not only impriſoned for a ſpace, but a huge fine ſet upon their heads, which they were faine to pay: Another enqueſt for acquitting another, beſide paying a fine money, put to open ignominie and ſhame. But thoſe doings were euen then of many accounted very violent, tyrannicall, and contrary to the liberty and cuſtome of the Realme of England. Wherefore it commeth very ſeldome in vſe: yet ſo much at a time the enqueſt may be corrupted, that the Prince may haue cauſe with Iuſtice to puniſh them: For they are men, and ſubject to corruption and partiality, as others be.

CHAP.

CHAP. II.

What remedie is, if ſentence bee thought vniuſtly giuen.

IN cauſes civill there is another order: for if the manner be pleaded to the iſſue, and the twelue men thereupon impanelled, the euidence brought and pleaded before them on both parties, the twelue ſeeme to be partiall, and to haue giuen ſentence contrary to the euidence ſhewed vnto them, the party grieued may bring againſt them, and the partie for whom the ſentence is giuen, a writ of attaint: and whereas before vpon the firſt queſt commonly they ſhall be Yeomen, now upon this attaint muſt goe foure and twentie Gentlemen dwelling within the ſhire, and twelue at the leaſt of the hundreth where the land lieth. The matter is pleaded againe before the ſame Iudges. The party defendant is not only now he who claimeth the land, but alſo all and euery of the Yeo-

Yeomen, who by their Verdict did giue it him.

There must in the attaint no more euidence be brought in, but only that which was brought in and alledged before the first Enquest. And if this second enquest of foure and twenty Gentlemen do adjudge as the first did, the Plaintiffe shall not only lose the land, but also pay a fine to the Prince, and damages to the party. If this second enquest do find that the first enquest haue gone partially, and against the euidence brought in before them, the first enquest is called attainted, & accounted as periured and infamed. The Prince had before, the waste of all lands and possessions with other punishments, which at this present by a law made by Parliament in the time of King *Henry* the eight is abolish d and now by that law or act of Parliament, beside other punishment, each of the quest attainted payeth unto the Prince and partie, fiue pound, if it bee vnder fortie

pounds;

pounds: and if aboue, then twentie pounds. Attaints be very ſeldome put in vſe, partly becauſe the gentlemen will not meete to ſlander and deface the honeſt Yeomen their neighbours: ſo that at a long time, they had rather pay a meane fine then to appeare and make the Enqueſt. And in the meane time they will intreate ſo much as in them lyeth the parties to come to ſome compoſition & agreement among themſelves as lightly they do, except either the corruption of the enqueſt be too euident, or the one partie is too obſtinate and headſtrong. And if the Gentlemen do appeare, gladlier they will confirme the firſt ſentence, for the cauſes which I haue ſaid, then goe againſt it. But if the corruption bee too much euident, they will not ſticke to attaint the firſt enqueſt: yet after the Gentlemen haue attainted the Yeomen, before the ſentence bee giuen by the Iudge (which ordinarily for a time is deferred) the parties be agreed, or one

one of them bee dead, the attaint ceaseth.

If any time before the sentence be giuen or put in execution, there bee found some such error in the writ, in the processe or forme (as our lawyers be very precise and curious of their formes) that it may be reuokable, it is brought a fresh to the disputation by a writ of errour, and all that is done, reuersed: but that is common to all other Countries, where the civill law is vsed, which they call *de nullitate processus*, and serueth both in England and in other places as well in causes criminall, as ciuill. Other kind of Appellation to reuoke processes, and to make them of short, long; of long infinite; which is vsed by the ciuill law: we haue not in our common law of England. By supplication to the Prince, and complaint to the Chancellour vpon suppose all of losse, or lack of the euidence, or too much fauour in the Countrey, & power of the aduersary, there is in our countrey

trey, as well as theirs both ſtopping and prolonging of Iuſtice. For what will not buſie-heads and louers of trouble neuer being ſatisfied, inuent in any Countrey to haue their deſire, which is to vexe their neighbors, and to liue alwaies in diſquiet? Men euen permitted of God, like flies, and lice, and other vermin, to diſquiet them who would employ themſelues vpon better buſines and more neceſſary for the Commonwealth. Theſe men are hated, and feared of their neighbors, loued, and aided of them which gaine by proceſſe, and waxe fat by the expence and trouble of other. But as theſe men ordinarily ſpend their owne thrift, and make others againſt their wils to ſpend theirs: ſo ſometime being throughly knowne, they doe not onely liue by the loſſe like euill husbands, but beſide rebuke and ſhame, by the equitie of the Prince and Courts Soueraigne, they come to be extraordinarily puniſhed, both corporally, & by their purſe, which thing

thing in my mind is as royall and Princely an act, and so beneficiall to the Common-wealth as in so small a matter a King or Queene can doe, for the repose and good education of their subjects.

CHAP. III.

Of that which in England is called appeale, in other places accusation.

IF any man hath killed my father, my sonne, my wife, my brother or next kinsman, I haue choice to cause him to be indited, giuing information to the enquest of enquiry (although hee chance to escape the Constable or Iustices hands & therfore not to bee apprehended) and thereupon to procure him to be outlawed, or else within a yeare and a day I may enter my appeale, that is mine accusations against him: If I began first to pursue him by information or denunciation to indite-

ment,

ment, I am now no party but the Prince, who for his dutie to God & his Common-wealth and subiects, must see justice executed against all malefactors & offenders against the Peace, which is called Gods and his, and doth in such manner as I haue sayd before. If I leaue that and will appeale, which is, profer my accusation against him who hath done to me this iniury, the defendant hath this advantage to put himselfe to the Iury, which is, for that which before, is said to haue that issue and triall by God and his Country, whereof the fashion I haue at large declared: or to demand the tryall by battaile, wherin both the parties must either combate in person, or else find other for them, who be called in our law Champions, or Campions, some do interpret them *ἀδυατὸς*, because they be men chosen, fat, lusty, fit for the feate, or as the French do terme them *Adroicts aux armes*. Which fight it out by *μονομαχία*, or as now they do call it *duellum*, or the camp, which

which shall haue all things equall: but according as *Mars* giueth the victory, so the Law is iudged, the one as *peractus reus*, the other as *calumniator*, to suffer the paine of death. So that by the great assize there is no appellation but death or life to the defendant, but this is more dangerous and equall, for the one or the other must die.

So is it not in the grand assize, for the *reus* or defendant is only in danger of death. Short it is, from day to Sunneset, the quarrell is ended, or sooner, who hath the better fortune. That seemeth very military (as in maner all our policy of England is) & to haue as small to do with Lawyers, as with Physitians, quickly to dispatch, and for the rest to returne, each man to his busines to serue the Common-wealth in his vocation. The Popes of Rome, and men of the Church, who of long time haue had dominion in our consciences, and would bring things to a more moderation, haue much detested this

kinde

kinde of triall and iudgement, as reason is every man misliketh that which is not like to his education, and cold reasoning by Theology & Philosophy: they (I say) much mislike many things done necessarily in hot policy.

At the least a Common-wealth military must adventure many things to keepe it in quiet, which cannot seeme so precisely good to them which dispute thereof in the shadow and in their studies. Howsoeuer it be, this kind of tryall a long time hath bin vsed. So that at this time we may rather seeke the experiences of it out of our Histories of time passed, then of any view or sight therof, of them which are now aliue. Neuertheleſſe the Law remaineth still, and is not abolished, and if it shall chance the murtherer or man-slayer (the one wee call him that lying in waite, & as they terme it in French, *de guet appendant*, killeth a man; the other by casuall falling out and sodaine debate and

choler

choler doth the same which way soever it bee done) if hee that hath slaine the man hath his pardon of the Prince as occasion or the favour of the Prince may so present that hee may haue it, yet the party grieued hath these two remedies, I say to require iustice by grand assize or battle upon his appeale and private reuenge, which is not denied him. And if the defendant either by great assize or battaile bee conuinced upon that appeale, he shall die, notwithstanding the Princes pardon. So much fauourable our Princes and the law of our Realme is to iustice and to the punishment of bloud violently shed.

CHAP. IV.

Of the Court of Starre-chamber.

THere is yet in England another Court, to the which that I can vnderstad there is not the like in any other

other Country. In the Terme time (the Terme time as I haue heretofore shewed, I call the time & those daies when law is exercised in westminster Hall, which as I haue sayd, is but at certaine times and Termes) euery weeke once at the least (which is commonly on Fridayes, and Wednesdaies, and the next day after that the Terme doth end) the Lord Chancellour, and the Lords, and other of the Priuie Councell, so many as will, and other Lords and Barons which be not of the priuy Councell, and be in the Towne, & the Iudges of England, specially the two chiefe Iudges, from nine of the clocke till it be eleven, do sit in a place which is called the Starre-chamber, either because it is full of windowes, or because at the first all the roofe thereof was decked with Images or starres gilded. There is plaints heard of riots. Riot is called in our English terme or speech, where any number is assembled with force to doe any thing: and it had the beginning, be-

cause

cause that our men being much ac-
customed either in forraine wars in
France, Scotland or Ireland; or bein
ouermuch exercised with ciuil war
within the Realme (which is the
fault that fatleth ordinarily among
bellicous Nations) whereby men o
warre, Captaines and Souldiers be-
come plentifull: which when they
haue no extreme seruice wherewith
to occupie their busie heads and
hands accustomed to fight & quar-
rell, must needs seeke quarrells and
contentions amongst themselues, &
become so ready to oppresse right a-
mong their neighbors, as they were
wont before with praise of mãhood
to be in resisting iniury offered by
their enemies. So that our Nation
vsed hereunto, and vpon that more
insolent at home, and not easie to be
be gouerned by law and politike or-
der, men of power beginning many
fraies, and the stronger by factions
and parties offering too much iniu-
rie to the weaker, were occasions of
making good lawes. First of retai-

ners,

ners, that no man ſhould haue aboue a number in his Liuery or retinue, then of the enquiry of routs & riots at euery Seſſions, and of the law whereby it is prouided that if any by force or by riot enter upon any poſſeſſions, the Iuſtices of the Peace ſhall aſſemble themſelues & remoue the force, and within certaine time enquire thereof.

And further, becauſe ſuch things are not commonly done by the meane men, but ſuch as be of power and force, & be not to be dealt withall with euery man, nor of meaue Gentiemen: if the riot be found and certified to the Kings Councell, or if otherwiſe it be complained of, the party is ſent for, and he muſt appeare in the Star-chamber: ſeeing (except the preſence of the King only) as it were the Majeſtie of the whole Realme before him, being neuer ſo ſtout, he will be abaſhed: and being called to anſwer (as he muſt come of what degree ſoeuer he be) he ſhal be ſo charged with ſuch grauitie,

with such reason, and remonstrance, and of those chiefe personages of England, one after another handling him on that sort, that what courage soeuer he hath, his heart will fall to the ground, and so much the more, when if he make not his answer the better, as seldome he can in so open violence, he shall be commanded to the Fleet, where he shall be kept in prison in such sort as these Iudges shall appoint him, and lie there till he be weary aswell of the restraint of his liberty, as of the great expences, which he must there sustaine, & for a time be forgotten, whiles after long suit of his friends, he will bee glad to be ordered by reason. Sometime as his deserts bee, he payeth a great fine to the Prince, besides great costs & dammages to the party, and yet the matter wherfore he attempted this riot and violence, is remitted to the common law. For that is the effect of the Court, to bridle such stout Noblemen, or Gentlemen which would offer wrong by force

to

to any manner of men, and cannot be content to demand or defend the right by order of the law. This Court began long before, but tooke augmentation and authority at that time that Cardinall *Wolsey* Archbishop of Yorke was Chancellour of England, who of some was thought to haue first deuised that Court, because that he after some intermission by negligence of time augmented the authority of it, which was at that time maruellous necessary to do to represse the insolency of the Noblemen and Gentlemen of the North parts of England, who being farre from the King and the seat of justice, made almost as it were an ordinary warre among themselues, and made their force their law, banding themselues with their Tenants, and seruants, to do or reuenge iniury one against another as they listed. This thing seemed not supportable to the Noble Prince *Henry* the eight: and sending for them one after another to his Court, to answer before

the persons before named, after they had had remonstrance shewed them of their euill demeanour, & bin well disciplined, as well by words as by fleeting a while, and thereby their purse and courage somewhat asswaged, they began to range themselues in order, and to understand that they had a Prince who would rule his subiects by his law and obedience. Sith that time this Court hath beene in more estimation, and is continued to this day in manner as I haue said before.

The Iudges of this Court are the Lord Chancellor, the Lord Treasurer, all the Kings Maiesties Councel, the Barons of this Land.

The officers therein are a Clarke, three Atturnies, an Examiner.

The Clarke keepeth the records, rules, entries, orders, and decrees, made in this Court.

The three Atturnies are for the plaintiffe, and for the defendant to frame their complaints, and answeres, and make the matter

ter apt to be heard for the Lords.

The Examiner taketh the depoſitions of the witneſſes of both ſides, to the proofe or diſproofe of the cauſe.

The order of proceeding to iudgment is by aſſent of voices, and open yeelding their mind in Court, the maior part being preferred for ſentence.

The puniſhment moſt vſuall, is impriſonment, pillory, a fine, & many times both fine and impriſonment.

The proceſſe is a *Subpæna*, an attachment, a proclamation of rebellion, and a commiſſion of rebellion.

This *Subpæna* is in manner of a libell or precept.

The Proclamation and commiſſion of rebellion ſerueth when the party is ſtubborne, hauing made contempt, and commeth not in by the former proceſſe.

The Meſſengers of this Court are the Warden of the Fleet: or the Sergeants at Armes.

The matters belonging moſt commonly, are by-ſtatutes, as is taking

way of maids within age against parents or guardians will. See *Anno* 4. & 5. *Phil. & Mariæ cap.* 8. All notable forgeries, counterfeiting letters or privy tokens. See *Hen. Anno* 33. *cap.* 1. *An.* 5. *Eliz. cap.* 11. slandering of Nobles, and seditious newes See *K.* 2. *Anno* 2. *cap.* 5. *Anno* 1. & 2. *Phil. & Mariæ. cap.* 2. *Anno* 2. 3. *Eliz. cap.* 7. All notable riots and unlawfull assemblies. See *Anno* 1. *Eliz. cap.* 17. And all the titles of Riots in *Rastals* Abridgement, all notable deceits, and all kinde of cousenage, &c.

Chap. V.

Of the Court of Wards and Liueries

He whom wee call a Ward in England, is called in Latine *pupillus*, and in Greeke ὀρφανὸς. The Guardian is called in Latin *tutor*, in Greek ἐπίτροπος, A Ward or infant is taken for a child in base age, whose

whose Father is dead. The Romans made two distinctions, *pupillum*, & *minorem*, the one fourteene yeere old, the other was accounted from thence to fiue and twenty. And as *pupillus* had *tutorem*, so *minor* had *curatorem*, till he came to the age of fiue and twenty. These Tutors or Curators were accountable for the reuenues of the Pupils, and Minors Lands; and great prouision, and many Lawes and orders bee made for them in the Bookes of the Ciuill Law, for rendring just and true accounts. So that to be a Guardian or Tutor was accounted among them to bee a charge or trouble, a thing subiect to much incumbrance and small profit, so that diuers meanes were sought for, to excuse men from it. With vs this is cleane contrary, for it is reckoned a profit to haue a Ward. For the Lord of whom the Ward doth hold the land so soone as by the death of the Father the child falleth Ward unto him, he seizeth vpon the body of the

Ward, and his lands, of which (ſo that he doth nouriſh the Ward) he taketh the profits without accounts. And beſide that, offring to his Ward conuenable marriage without diſparagement before the age of one and twenty yeeres if it be a man, of fourteene if it be a woman. If the Ward refuſe to take that marriage, he or ſhe muſt pay the value of the marriage, which is commonly rated according to the profit of his Lands. All this while I ſpeake of that which is called in French *garde noble*, that is, of ſuch as hold lands of others by Knights ſeruice, for that is another kind of ſeruice, which we call in French *gard returier*, we call it *gard in ſocage*, that is, of ſuch as do not hold by Knights ſeruice, but by tenure of the Plough. This Ward-ſhip falleth to him who is next of the kin, and cannot inherit the Land of the Ward, as the Vncle by the Mothers ſide, if the Land do deſcend by the Father, & of the Fathers ſide, if the Land doe deſcend by the Mo-

ther

ther. This Guardian is accountable for the reuenues and profits of the Land, as the Tutor by the Ciuill Law to the Ward or Pupill ſo ſoone as he is of full age.

The man is not out of Wardſhip by our Law till one & twenty yeere old, from thence he is reckoned of full age, as well as in the Romane Lawes at fiue and twenty.

The woman at fourteene is out of Ward: for ſhe may haue a Husband able to doe the Knights ſeruice, ſay our Books. And becauſe our Wiues be in the power (as I ſhall tel you hereafter) of their husbands, it is no reaſō ſhe ſhould be in two diuers guards.

Many men do eſteeme this Wardſhip by Knights Service very vnreaſonable and vniuſt, and contrary to nature, that a Free-man and Gentleman ſhould be bought and ſold like an Horſe or an Oxe, and ſo change Guardians as Maſters and Lords: at whoſe government not only his body but his Lands and his houſes ſhould be, to be waſted and ſpent

without accounts, and then to marry at the will of him, who is his naturall Lord, or his will who hath brought him to such as he likes not peradventure, or else to pay so great a ransome. This is the occasion they say, why many Gentlemen be so euill brought vp touching vertue and learning, and but onely in daintinesse & in pleasure: and why they be married very young, and before they be wise, & many times doe not greatly loue their wiues. For when the Father is dead, who hath the naturall care of his childe, not the Mother, nor the Vncle nor the next of kinne, who by all reason would haue most naturall care for the bringing vp of the infant & *Minor*, but the Lord of whom hee holdeth his land in the Knights Seruice, be it the King or Queene, Duke, Marquesse, or any other, hath the gouernment of his body, and marriage, or else who that bought him at the first, second, or third hand. The Prince as hauing so many, must needs

needs giue or ſell his Wards away to other, and ſo he doth. Other do but ſeek which way they may make moſt aduantage of him, as of an Oxe or other Beaſt. Theſe all (ſay they) haue no naturall care of the infant, but of their owne gaine, and eſpecially the buyer will not ſuffer his Ward to take any great paines, either in ſtudy or any other hardneſſe, leſt he ſhould be ſicke and die, before he hath married his Daughter, Siſter, or Couſin, for whoſe ſake he bought him, and then all his money which he paid for him ſhould be loſt. So he who had a Father which kept a good houſe, & had all things in good order to maintaine it, ſhall come to his owne, after he is out of Wardſhip, Woods decayed, Houſes falne downe, ſtocke waſted & gone, Lands lent forth, and plowed to the barren, and to make amends, ſhall pay yet one yeeres rent, for reliefe, and ſue *ouſter le maine*, beſide other charges, ſo that not of many yeeres, and peraduenture neuer he ſhall be able

able to recouer, and come to the estate where his Father left it. This as it is thought was first granted upon a great extremity to King *Henry* the third for a time upon the warre which he had with the Barons, and afterward increased, and multiplied to more and more persons and grieuances, and will be the decay of the Nobility and liberty of England. Other againe say, the Ward hath no wrong, for either his Father purchased the Land, or it did not descend unto him from his Ancestours with his charge. And because he holdeth by Knights Seruice, which is in armes and defence, seeing that by age he cannot doe that whereto he is bound by the Land, it is reason he answere that profit to the Lord, whereby he may haue as able a man so do the seruice. The first Knights in Rome, those that were chosen *Equites Romani* had *equum publicum*, on which they serued, and that was at the charge of the Widowes and Wards as appeareth by *Titus Liuius*,

tius, becauſe that thoſe perſons could not doe bodily ſeruice to the Common-wealth. Wherefore this is no new thing, but reaſonable in that moſt wiſe Common-wealth, and to the prudent King *Sernius Tullius*. As for the education of our Common-wealth, it was at firſt *Militarie*, and almoſt in all things the ſcope and deſigne thereof is *Militarie*. Yet it was thought moſt like, that Noblemen, good Knights, and great Captaines, would bring vp their Wards in their owne feats and vertues, and then marry them into like race and ſtocke, where they may find and make friends. Who can better looke to the education, or hath better skill of the bringing vp of a Gentleman, than he who for his higher Nobility hath ſuch a one to hold of him by Knights ſeruice; or would do it better then hee that looketh or may claime ſuch ſeruice of his Ward, when age and yeares will make him able to doe. That which is ſaid that this manner of

Ward-

Wardſhip began in the time of King *Henrie* the third, cannot ſeeme true. For in Normandy and other places of France the ſame order is.

And that Statute made in King *Henry* the Thirds time touching Wards, to him that will weigh it well, may ſeeme rather a qualification of that matter, and an argument that the faſhion of Wardſhip was long before: but of this matter another time ſhall be more conuenient to diſpute. This may ſuffice to declare the manner of it.

The Iudge in this Court is the Maſter of the Wards.

Officers are the Atturnie of the Wards for the King.

The Surueyor, the Auditor, the Treaſurer, the Clarke; two common Atturnies, inferiour Officers, alſo Meſſengers, and Purſuiuants.

The Atturny for the Wards is alwayes for the Kings right, and aſſiſtant with the Maſter of the Wards.

The Surueyor is he that hath the allowing of euery Liuery that iſſued out.

The

The Auditor taketh the account, and cauſeth Proceſſe to be made.

The Treaſurer receiueth the money due to his Majeſty.

The Clarke is writer of the Records, & writer of the Decrees, Proceſſes, and Orders of the Court.

The matters of this Court are all benefits that may come vnto his Majeſty, by Guard, by Marriage, Prieuueer, Seaſin, and Reliefe.

The generall Proceſſe in this Court is a Commiſſion, a Proceſſe in manner of a Proclamation, warning the party or parties to appeare before the Maſter of the Wards. More ſpeciall proceſſe belonging to this Court, are a *Diem clauſit extremum*, a *Deuenerunt*, a *melius inquirendum*, a *Datum eſt nobis intelligi*, a *Quæ Plura*. Of the nature of theſe ſee *Stamfords* Books of the Kings Prerogatiue.

Out of this Court are the Liueries ſued, and committed to the Clarks of the Petty Bagge, Officers in the Chancery.

When

When the heire hath prooued his age, and sued his Liuery, then he must do homage to that is the Deputy of the Prince for that purpose, and then must pay a fine or fee to the Lord Priuy Seale.

CHAP. VI.

Of the Dutchie Court.

THe Dutchie Court of Lancaster is also the Kings Court of Record. In it are holden all Pleas reall and personall, which concerne any of the Dutchie lands, now in his Maiesties hands and parcell of the Crowne: but serued in Court and iurisdiction.

The Iudge in this Court is the Chancellor, assisted by the Atturney of the Dutchie for the King, the Clarke of the Court, diuers Surueyors, two common Atturnies, diuers Auditors, two Assistants, the Sergeant of his Maiesty.

The

The Chancellor is a Iudge of the Court, to see Iustice administred betweene his Maiesty & his Subiects, and betweene party and party.

The Atturney is to maintaine the Kings, & is assistant to the Chancellor, & sheweth him what the Law is

The Clark keepeth the Rolles, and Records, and maketh the Processe.

The Surueyors are diuers: one more principall: they suruey the Kings land within the Dutchie.

The Auditors are diuers: one more principall: they are to account and make the Order of the receits within the Dutchie.

The common Atturnies are for the Suitors that haue cause in action within the Court.

The assistants are two Iudges at the Common law that are to ayde them in difficult points of law.

The Sergeant for the King, is a learned Counsellour, appointed to be of his Maiesties Councell for his right.

There is also belonging to this Court

Court a Vice-chancellour, that ſer-
ueth for the County Palatine of
Lanc.ſter, he maketh all originall
Proceſſes within his liberty, as doth
the Lord Chancellour of England
for the Chancery.

The Proceſſe of the County Pala-
tine, is a *Sub pœna*, as in the Chan-
cerie.

CHAP. VII.

The Court of Requeſts.

THis Court is the Court wherin all ſuits made to his Maieſtie by way of ſupplication or petition are heard & ended; neither ſhould it hold plea of any matters then ſuch. And this is called the poore mans Court, becauſe there he ſhould haue right without paying any money: and it is called alſo the Court of conſcience.

The Iudges in this Court are the Maſters of Requeſts, one for the Com-

Common Lawes, the other for the Ciuill Lawes.

The Officers in this Court, are the Regiſter, the Examiner, three Atturnies, one Meſſenger or Purſuiuant.

The Examiner is hee that oppoſeth the witneſſes by oath, and recordeth their depoſitions.

The Atturnies ſerue for the Plaintiffe and Defendant to frame their complaints and anſwers.

The Purſuiuant is an officer in this Court, to bring any man before the Iudges whom they ſhall name.

The matters in this Court at this day, are almoſt all ſuits that by colour of equity or ſupplication made to the Prince, may be brought before them: properly all poore mens ſuits, which are made to his Maieſty by ſupplication.

The Proceſſes in this Court, are a priuy Seale, Proclamation of rebellion.

The nature of theſe Proceſſes is, as was ſaid before in the Court of Star-chamber.

CHAP.

CHAP. VIII.

Of Wiues and Marriages.

THe Wiues in England bee as I sayd *in potestate maritorum*, not, that the Husband hath *vitæ ac necis potestatem*, as the Romans had in the old time, of their children, for that is onely in the power of the Prince, and his Lawes, as I haue said before: but that whatsoeuer they have before marriage, as soone as marriage is solemnized is their husbands, I meane of Mony, Plate, Iewels, Cattell, and generally all moueables. For as for land and heritage, it followeth the succession, and is ordered by the Law, as I shall say hereafter, and whatsoeuer they get after marriage, they get to their husbands. They neither can giue nor sell any thing either of their Husbands or their owne. There is no moueable thing by the Law of England *constante matrimonio*, but as *peculium serui aut familiæ*, and yet in moue-

moueables at the death of her Husband she can claime nothing, but according as hee shall will by his Testament, no more then his sonne can: all the rest is in the disposition of the Executors, if he die testate. Yet in London and other great Cities they haue that Law & custome, that when a man dieth, his goods be diuided into three parts. One third part is imployed upon the buriall & the bequests, which the testator maketh in his testament. Another third part the wife hath as her right, and the third part is the due and right of his children, equally to be diuided among them. So that a man there can make testament but of one third of his goods: If he dye intestate, the Funerals deducted, the goods be equally diuided betwene the Wife and children.

By the common Law of England if a man dye intestate, the Ordinary (which is the Bishop by common intendment) sometime the Archdeacon, Deane, or Prebendary, by priuiledge

ledge and prescription, doth commit the administration of the goods to the Widow or the child, or next kinsman of the dead appointing out portions to such as naturally it belongeth vnto, and the Ordinary by common vnderstanding, hath such grauity and discretion as shall befit for so absolute an authority for the most part, following such diuision as is used in London, either by thirds or halues. Our fore-fathers newly conuerted to the Christian faith, had such confidence in their Pastors and instructors, and tooke them to be men of such conscience, that they committed that matter to their discretion: and belike at the first were such as wou'd seeke no priuate profit to themselues thereby: that being once ordained hath still so continued. The abuse which hath followed was in part redressed by certain Acts of Parliament made in the time of King *Henry* the eighth, touching the probate of testaments, committing of administration, and mortuaries.

But

But to turne to the matter which we now haue in hand, the wife is so much in the power of her Husband, that not onely her goods by marriage are straight made her husbands, and she loseth all her administration which shee had of them: but also where all Englishmen haue name and surname, as the Romans had, *as Marcus Tullius, Caius Pompeius, Caius Iulius*, whereof the name is giuen to vs at the Font, the surname is the name of the Gentility & stock which the son doth take of the Father alwayes, as the old Romans did, our Daughters so soone as they bee married, loose the sirname of their Father, and of the family and stocke whereof they do come, and take the sirname of their Husbands, as transplanted from their Family into another. So that if any wife was called before *Philip Wilford* by her owne name and her Fathers surname, so soone as she is married to me, she is no more called *Philip Wilford*, but *Philip Smith*, and so must she write and

and signe: and as she changeth husbands, so she changeth sirnames, called alwaies by the sirname of her last husband. Yet if a woman once marrie a Lord or a Knight, by which occasion she is called my Lady, with the sirname of her Husband, if her dye, and shee take a Husband of a meaner estate, by whom she should not be called Lady, (such is the honour wee doe giue to Women) shee shall still bee called Lady with the sirname of her first Husband, and not of the second.

I thinke amongst the old Romans those marriages which were made *per coemptionem in manum*, and *per æs* and *libram*, made the wife *in manu & potestate viri*, whereof also we had in our old law and ceremony of marriage, a certaine memory as a view and *vestigium*. For the woman at the Church doore was giuen of the Father, or some other man of the next of kinne into the hands of the Husband, and he layd downe gold and siluer for her upon the

Booke,

Booke, as though he did buy her, the Priest was belike in stead of *Lipreu* : our marriages bee esteemed perfect by the Law of England, when they bee solemnized in the Church or Chappell, in the presence of the Priest and other witnesses. And this only maketh both the husband & the Wife capable of all benefits which our Law doth giue vnto them and their lawfull children. Insomuch that if I marry the widow of one lately dead, and at the time of her husbands death was with child, if the child be borne after marriage solemnized with me, this child shall be my heire, and is accounted my lawfull some, not his whose child it is indeed : so precisely we take the letter where it is sayd, *pater est quem nuptiæ demonstrant*. Those wayes & means which *Iustinian* doth declare to make Bastards to be lawfull children, *muliers*, or rather *mulieurs* (for such a terme our lawyers vseth for them which be lawfull children) be of no effect in England: neither the Pope,

nor Emperor, nor the Prince himselfe neuer could there legitimate a bastard to enjoy any benefit of our Law: the Parliament hath only that power.

Although the wife be (as I haue written before) *in manu & potestate mariti*, by our Law, yet they be not kept so straight as in a mew, and with a guard as they be in Italy and Spaine, but haue almost as much liberty as in France, and they haue for the most part all the charge of the house and houshould (as it may appeare by *Aristotle* and *Plato*, the wiues of the Greekes had in their time) which is indeed the naturall occupation, exercise, office, and part of a wife. The husband to meddle with the defence either by law or force, and with all forreine matters, which is the naturall part and office of the man, as I haue written before. And although our Law may seeme somewhat rigorous toward the wiues: yet for the most part they can handle their husbands so well and

so

ſo dulcely, and ſpecially when their husbands bee ſicke, that where the law giueth them nothing, their husbands at their death, of their goods will giue them all. And few there be that bee not made at the death of their husbands either ſole or chiefe executrices of his laſt will and Teſtament, and haue for the moſt part the gouernment of the children and their portions: except it be in London, where a peculiar order is taken by the City much after the faſhion of the ciuill Law.

All this while I haue ſpoken only of moueable goods. If the Wife be an inheritrix and bring land with her to the marriage: that land deſcendeth to her eldeſt ſonne, or is diuided among her daughters. Alſo the manner is, that the land which the wife bringeth to the marriage, or purchaſe after wards, the husband cannot ſell nor alienate the ſame, no not with her conſent, nor ſhe her ſelfe during the marriage, except that ſhee bee ſole examined by the

It is auoidable after the husbands death, except it be for one and twentie yeares, or 3. liues according to the ſtatute, except they leaſe a fare.

Iudge at the common law: and if he haue no child by her & ſhe die, the land goeth to her next heires at the common law: but if in the marriage he haue a child by her, which is heard once to cry, whether the child liue or dye, the husband ſhall haue the vſufruit of her lands (that is the profit of them) during his life & that is called the curteſie of Engl̃d.

Likewiſe if the husband haue any Land either by inheritance deſcended, or purchaſed & bought, if he die before the wife, ſhe ſhall haue vſufruit of the one third part of his lands. That is, ſhe ſhall hold the one third part of landes during her life as her dowry, whether hee hath child by her or no. If he hath any children, the reſt deſcendeth ſtraight to the eldeſt: if hee hath none, to the next heire at the common law and if ſhe miſlike the diuiſion, ſhe ſhal aske to be endowed of the faireſt of his lands to the third part.

This which I haue written touching

ing marriage and the right, in moueables and vnmoueables which commeth thereby, is to be vnderstood by the common law, when no priuate contract is more particularly made. If there be any priuate pacts, couenants, and contracts made before the marriage betwixt the husband and the wife, by themselues, by their parents, or other friends, those haue force to bee kept according to the firmitie and strength in which they are made: And this is enough of wiues and marriage.

CHAP. IX.

Of Children.

OVr children be not *in potestate parentum*, as the children of the Romans were: but as soone as they be *puberes*, which we call the age of discretion, (before that time nature doth tell they bee but as it were *partes parentum*) that which

is theirs they may giue or ſell, and purchaſe to themſelues either lands and other moueables, the Father hauing nothing to do therewith. And therfore *mancipatio* is cleane ſuperfluous, we know not what it is. Likewiſe *ſui hæredis* complaints *de inofficioſo teſtamento* or *præteritorum liberorum, non emancipatorum*, haue no effect nor vſe in law, nor we haue no manner to make lawfull children but by marriage, and therefore wee know not what is *adoptio*, nor *arrogatio*. The Teſtator diſpoſeth in his laſt will his moueable goods freely as he thinketh meete and conuenient without controlement of wife or children. And our teſtimonies for goods moueable be not ſubject to the ceremonies of the ciuill law, but made with all liberty and freedome, and *jure militari*. Of lands as ye haue underſtood before, there is difference: For when the owner dieth, his land diſcendeth only to his eldeſt ſonne, all the reſt both ſonnes and daughters haue nothing by the com-

common law, but muſt ſerue their eldeſt brother if they will, or make what other ſhift they can to liue: except that the Father in his life time do make conueyance, and eſtate of part of his land to their vſe, or elſe by deuiſe, which words amongſt our Lawyers doe betoken a Teſtament written, ſealed and deliuered in the time of the Teſtament before witneſſe: for without thoſe ceremonies a bequeaſt of lands is not auaileable. But by the common Law, if he that dieth had no ſonnes but daughters, the land is equally diuided amongſt them, which by portion is made by agreement or by lot. Although (as I haue ſayd) ordinarily and by the common Law, the eldeſt ſon inheriteth all the lands, yet in ſome Countreys they haue equall portion, and that is called gauel-kind, and is in many places in Kent. In ſome places the yongeſt is ſole heire, and in ſome places after another faſhion. But theſe being but particular cuſtomes of certaine places, and out of the rule

of common law, do little appertaine to the disputation of the policy of the whole Realme, and may be infinite. The Common-wealth is iudged by that which is most ordinarily and commonly done through the whole Realme.

CHAP. X.

Of Bondage and Bondmen.

AFter that we haue spoken of all the sorts of freemen according to the diuersitie of their estates and persons, it resteth to say somewhat of Bondmen which were called *serui*, which kind of people and the disposition of them and about them doth occupie the most of *Iustinians* Digestes, and Code. The Romanes had two kindes of Bondmen, the one which were called *serui*, and they were either which were bought for money, taken in warre, left by succession, or purchased by some other kind of lawfull acquisition; or else

borne

borne of their bondwomen, and called *verne*: all those kind of Bondmen be called in our law villains in grosse, as you would say immediatly bond to the person and his heires. Another they had (as appeareth in *Iustinians* time which they call *adscriptitii glebæ* or *agricensiti*. These were not bond to the person, but to the Mannor or place, and did follow him who had the Manors, and in our Law are called *villaines regardants*, for because they be as members, or belonging to the Manor or place. Neither of the one sort or of the other haue wee any number in England. And of the first I neuer knew any in the Realme in my time. Of the second, so few there be, that it is not almost worth the speaking, but our Law doth acknowledge them in both those sorts.

Manumission of that kind of villaines or bondmen in England, is vsed and done after diuers sorts, and by other, and more light and easie meanes than is prescribed in the ci-

uill Law: and being once manumitted, he is not *libertus manumittentis*, but simply *liber*: howbeit since our Realme hath receiued the Christian Religion, which maketh vs all in Christ brethren, and in respect of God and Christ, *conseruos*, men began to haue conscience to hold in captiuity, & such extreme bondage, him whom they must acknowledge to be their brother, and as we vse to terme him a Christian, that is, who looketh in Christ, and by Christ, to haue equall portion with them in the Gospel and saluation.

Vpon this scruple, in continuance of time, and by long succession, the holy Fathers, Monkes and Friers, in their confession, & specially in their extreame and deadly sicknesses, burdened the consciences of thē whom they had vnder their hands: so that temporal men by little and little, by reason of that terror in their conscience, were glad to manumisse all their villains: but the said holy Fathers, with the Abbots and Priors,

did

did not in like sort by theirs; for they had also conscience to impouerish & dispoyle the Church so much as to manumit such as were bond to their Churches, or to the Manors which the Church had gotten, and so kept theirs still. The same did the Bishops also, till at the last, and now of late some Bishops (to make a piece of money) manumitted theirs, partly for argent, partly for slanders, that they seemed more cruell than the temporality: after the Monasteries comming into temporal mens hands, haue bin occasion that now they be almost all manumitted. The most part of bondmen when they were, yet were not used with vs so cruelly, nor in that sort as the bondmen at the Romans ciuill law, as appeareth by their comedies: nor as in Greece, as appeareth by theirs: but they were suffered to enjoy copyhold land, to gaine and get as other seruants, that now and then their Lords might fleece them, and take a piece of money of them, as in

France

France the Lords doe taile them whom they call their Subjects, at their pleasure, and cause them to pay summes of mony as they list to put upon them. I thinke both in France and England, the change of Religion to a more gentle, humane, and more equall sort, (as the Christian Religion, is in respect of the Gentiles) caused this old kind of seruile seruitude and slauerie to be brought into that moderation, for necessity, first to villaines regardants, and after to seruitude of lands & tenures, and by little and little finding out more ciuill and gentle meanes, and more equal to haue that done which in time of heathenisme, seruitude or bondage did, they almost extinguished the whole. For although all persons Christians be brethren by Baptisme in IESVS Christ, and therfore may appeare equally free, yet some were, and still might be Christened being bond and serue, and whom as the Baptisme did find, so it did leaue them, for it changeth not

ciuill

ciuill lawes nor compacts amongst men which be not contrary to Gods lawes: but rather maintaineth them by obedience.

Which seeing men of good conscience hauing that scruple whereof I wrote before, haue by little and little found meanes to haue and obtaine the profit of seruitude & bondage which Gentility did vse, and is vsed to this day among Christians on the one part, and Turks & gentiles on the other part, when warre is betwixt them, upon those whom they take in battaile. Turkes and Gentiles I call them, which vsing not our Law, the one beleeueth in one God, the other in many Gods, of whom they make images. For the law of Iewes is well enough knowne, and at this day so farre as I can learne amongst all people Iewes bee holden as it were in a common seruitude, and haue no rule nor dominion as their owne prophecies do tell, that they should not haue after that Christ promised to them, was

of

of them refuſed: for when they would not acknowledge him, obſtinately forſaking their helpe in ſoule for the life to come, & honour in this world for the time preſent, not taking the good tidings, newes, and Euangell brought to them by the great grace of God, and by the promiſe of the Prophets fructified in vs which be Gentiles, & brought forth this humanity, gentleneſſe, honour, and godly knowledge which is ſeene at this preſent. But to returne to the purpoſe.

This perſwaſion I ſay of Chriſtians, not to make nor keepe his brother in Chriſt, ſeruile, bond, and vnderling for euer vnto him, as a beaſt rather then a man, and the humanity which the Chriſtian Religion doth teach, hath engendred through Realmes (not meere to Turkes and Barbarians) a doubt, a conſcience, a ſcruple to haue ſeruants and bondmen; yet neceſſitie on both ſides, of the one to haue helpe, on the other to haue ſeruice, hath kept a figure or fa-

ſhion

ſhion thereof. So that ſome would not haue bond men, but *adſcripti glebæ*, and villaines regardant to the ground, to the intent their ſeruice might be furniſhed, that the Country being euill, unwholſome, and otherwiſe barren, ſhould not be deſolate. Others afterwards found out the wayes and meanes, that not the men, but the Land ſhould bee bond, and bring with it ſuch bondage and ſeruice to him that occupieth it, as to carry the Lords dung unto the fields, to plow his ground at certaine dayes, ſow, reape, come to his Court, ſweare faith unto him, and in the end to hold the land but by copy of the Lords Court-rolle, and at the will of the Lord.

The tenure is called alſo in our law, villaine, bond, or ſeruile tenure: yet to conſider more deepely, all Land, even that which is called moſt free land, hath a bondage annexed vnto it, not as naturally the lower ground muſt ſuffer and receiue the water and filth which falleth from the

the higher ground, nor such as *Iustinian* speaketh of *de seruitutibus prædiorum rusticorum & urbanorum*, but the land doth bring a certaine kinde of seruitude to the possessor. For no man holdeth Land simply free in England, but he or she that holdeth the Crown of England: all others hold their land in fee, that is, upon a faith or trust, & some seruice to be done to another Lord of a Manor, as superiour, and he againe of an higher Lord, till it come to the Prince, and him that holdeth the Crowne.

So that if a man die, and it bee found that he hath land which hee holdeth, but of whom no man can tell, this is understood to be holden of the Crowne, and *in capite*, which is much like to the Knights seruice, and draweth vnto it three services, *Homage*, *Ward*, and *Mariage*: that is, hee shall sweare to bee his men, and to be true vnto him of whom he holdeth the land: His son who holdeth the land after his death

of

of his Father, shal be married where it pleaseth the Lord.

Hee that holdeth his land most freely of a temporall man (for frank almes & franke marriage hath another cause and nature) holdeth by fealty only, which is, he shal sweare to be true to the Lord, and to such seruice as appertaineth to the land which hee holdeth of the Lord.

So that all free land in England is holden in fee, or *feodo*, which is as much to say, as *in fide*, or *fiducia*, that is, in trust and confidence, that hee shall be true to the Lord of whom he holdeth it, pay such rents, doe such seruice, and obserue such conditions as were annexed to the first donation. Thus all sauing the Prince bee not *veri Domini*, but rather *fiduciarij domini*, and *possessores*.

This is a more likely interpretation then that which *Littleton* doth put in his booke, who saith that *feodum idem est quod hereditas*, which it doth betoken in no language. This happeneth many times to them who be-

be of great wit and learning, yet not seene in many tongues, nor marke not the deduction of words which time doth alter. *Fides* in Latine (the *Gothes* comming into *Italy*, & corrupting the language) was turned first into *fede*, and at this day in *Italy* they will say *in fide*, *en fide*, or *ala fe*. And some vncunning lawyers that would make a new barbarous Latine word, to betoken land giuen in *fidē*, or as the Italian saith, *in fide*, or *fe*, made it *feudum*, or *feodum*. The nature of the word appeareth more euidēt in those which we cal to *feff*, *feoff*, or *feoffes*, the one be *fiduciarij possessores*, or *fides cōmissarij*: the other is, *dare in fiduciam*, or *fidei cōmissū*, or more latinly, *fidei cōmittere*.

The same *Littleton* was as much deceiued in *Withernam*, and diuers others old words. This *Withernam*, as he interpreteth *vetitum namium*, in what language I know not: whereas in truth it is in plaine Dutch, and in our old Saxon language, *Wither nempt*, *alterum accipere*, or *vicissim rapere*,

rapere, a word that betokeneth that which in barbarous latin is called *represalia*, whē one taking of mea distres, which in latine is called *pignus*, or any other thing, & carrying it away out of the jurisdiction wherein I dwel, I take by order of him that hath jurisdiction, another of him againe, or of some other in that jurisdiction, and do bring it into the iurisdiction, wherin I dwel, that by equal wrong I may come to haue equal right. The maner of *represalia*, and that we call *Withernā*, is not altogether one: but the nature of them both is as I haue described, and the proper significatiō of the words do not much differ.

But to returne thither where we did digresse: ye see that where the persons be free, and the bodies at ful liberty, and *maxime ingenui*, yet by annexing a condition to the Land, there is meanes to bring the owners and possessors therof into a certaine seruitude, or rather libertinity: That the tenants beside paying the rent accustomed, shall owe to the Lord a certaine

certain faith, duty, truſt, obedience: & (as we terme it) certain ſeruice, as *Libertus*, or *Cliens patrono:* which becauſe it doth not conſiſt in the perſons, for the reſpect in them doth not make them bond, but the land & occupation therof, is more properly expreſſed in calling the one Tenant, the other Lord of the fee, then either *libertus* or *cliens* can doe the one, or *patronus* the other: for theſe words touch rather the perſons, and the office and duty betwene them, then the poſſeſſions: but in our caſe leauing the poſſeſſion and land, all the obligation of ſeruitude and ſeruice is gone.

Another kind of ſeruitude or bondage is uſed in England for the neceſſity thereof, which is called apprenticehood. But this is onely by couenant and for a time; and during the time, it is *vera ſeruitus*. For what ſoeuer the Apprentice getteth of his owne labor, or of his maſters occupation or ſtocke, hee getteth to him whoſe Apprentice he is, he muſt not

lye.

lye forth of his masters doores, he must not occupy any stocke of his owne, nor marry without his masters licence, and hee must doe all seruile offices about the house, and bee obedient to all his masters commandements, and shall suffer such correction as his Master shall thinke meete, and is at his masters cloathing, and nourishing, his Master being bound onely to this which I haue sayd, and to teach him his occupation: and for that he serueth some, for seuen or eight yeares, some nine or tenne yeeres, as the masters and the friends of the young man shall thinke meete, or can agree; he is altogether (as *Polidore* hath noted) *quasi pro emptitio seruo*. Neuertheless, that neither was the cause of the name Apprentice, neither yet doth the word betoken that which *Polidore* supposeth, but a French word, and betokeneth a learner or a scholler.

Apprendre in French is to learne, and *Apprentize* in French

(of

(of which tongue wee borrowe this word, and many other) a *Discipulus* in Latine: Likewise he to whom he is bound, is not called the Lord, but his master, as ye would say his teacher. And the pactions agreed upon, be but in writing, signed and sealed by the parties, and registred for more assurance. Without being such an Apprentice in London, and seruing out such a seruitude in the same Citie for the number of yeeres agreed upon, by order of the Citie amongst them, no man being neuer so much borne in London, and of parents Londoners, is yet admitted to bee a Citizen or freeman of London: the like is used in other great Cities of England. Beside, Apprentices, others be hired for wages, and be called seruants or seruing men and women throughout the whole Realme, which bee not in such bondage as Apprentices, but serue for the time for dayly ministerie, as *serui* and *ancillæ* did in the time of Gentility,

The sons of free men of London are also free by birth, according to the custome.

and

and bee for other matters in libertie as full free men and women.

But all ſeruants, labourers, and others not married muſt ſerue by the yeere: and if hee bee in couenant, hee may not depart out of his ſeruice without his Maſters licence; and hee muſt giue his Maſter warning that hee will depart, one quarter of a yeere before the time of the yeere expireth, or elſe hee ſhall be compelled to ſerue out another yeare. And if any young man vnmarried bee without ſeruice, hee ſhall bee compelled to get him a maſter, whom hee muſt ſerue for that yeare, or elſe hee ſhall bee puniſhed with ſtockes and whipping, as an idle Vagabond. And if any man married, or vnmarried, not hauing rent or liuing ſufficient to maintaine himſelfe, doe liue ſo idly, he is enquired of, and ſometime ſent to the Iayle, ſometime otherwiſe puniſhed as a ſturdie Vagabond:

ſo

ſo much our policy doth abhorre idleneſſe. This is one of the chiefe charges of the Iuſtices of Peace in euery Shire. It is taken for vngentleneſſe, diſhonour, and a ſhew of enmity, if any Gentleman doe take another Gentlemans ſeruant (although his maſter doe put him away) without ſome certificate from his Maſter, either by word or writing that hee hath diſcharged him of his ſeruice. That which is ſpoken of men-ſeruants, the ſame is alſo ſpoken of women. So that all youth that hath not ſufficient reuenues to maintaine it ſelfe, muſt needs with us ſerue, and that after an order as I haue written. Thus neceſſity and want of bondmen hath made men to vſe freemen as bondmen to all ſeruile ſeruices: but yet more liberally and freely, and with a more equality and moderation, than in time of Gentility Slaues and Bondmen were wont to bee vſed, as I haue ſayd before. This firſt and latter

fashion

fashion of temporall seruitude, and upon paction, is used in such Countries as haue left off the old accustomed maner of seruants, slaues, bondmen and bond-women, which was in vse before they had receiued the Christian faith. Some after one sort, some either more or lesser rigorosly according as the nature of the people is inclined, or hath deuised amongst themselues, for the necessity of seruants.

CHAP. XI.

Of the Court which is Spirituall or Ecclesiasticall, and in the Booke of Law, Court Christian, Curia Christianitatis.

THe Archbishops and Bishops haue a certaine peculiar jurisdiction vnto them, especially in foure manner of causes: Testaments and legations, Tithes and Mortuaries, Marriage and Adultery

or Fornication, and alſo of ſuch things as appertaine to Orders amongſt themſelues & matters concerning Religion. For as it doth appeare, our Anceſtors hauing the Common-wealth before ordained and ſet in frame, when they did agree to receiue the true and Chriſtian Religion, for that which was eſtabliſhed before, and concerned externe policy (which their Apoſtles, Doctors, and Preachers did allow) they held and kept ſtill with that which they brought in the new And thoſe things, in keeping wherof they made conſcience, they committed to them to be ordered and gouerned as ſuch things of which they had no skill, and as to men in whom for the holineſſe of their life & good conſcience, they had a great and ſure confidence. So theſe matters be ordered in their Courts, and after the faſhion and manner of the Ciuill Law, or rather common, by Citation, Libell, *conteſtationem litis*, Examination of witneſſes priuily

priuily, by Exceptions, Replications apart and in Writing, Allegations, Matters by ſentences giuen in writing by Appellations, from one another, as well *à grauamine* as *à ſententia definitiua*, and ſo they haue other names, as Proctors, Advocates, Aſſeſſors, Ordinaries, and Commiſſioners, &c. farre from the manner of our order in the Common Law of England, and from that faſhion which I haue ſhewed you before. Wherefore if I ſay the Teſtament is falſe and forged, I muſt ſue in the ſpirituall Law, ſo alſo If I demand a Legacie: but if I ſue the Executor, or Adminiſtrator, which is he in our Law, who is in the Ciuill Law, *hæres* or *bonorum mobilium poſſeſſor ab inteſtato*, for a debt which the dead ought me, I muſt ſue in the Temporall Court. Theſe two Courts the Temporall and the Spirituall, bee ſo diuided, that whoſoeuer ſueth for any thing to Rome, or in any Spirituall Court for that cauſe or

action, which may bee pleaded in the Temporall Court of the Realme, by an old Law of England, hee falleth into a *Præmunire*, that is, hee forfaiteth all his goods to the Prince, and his body to remaine in prison during the Princes pleapleasure: and not that onely but the Iudge, the Scribe, the Procuror and Assessour which receiueth and doth maintaine that vsurped pleading, doth incurre the same danger. Whether the word *Præmunire* doth betoken that the authoritie and jurisdiction of the Realme is prouided for before, and defended by that Law, and therefore it hath that name *Præmunire*, or *Præmuniri*, or becausse that by that law such an attemptor hath had warning giuen before to him of the danger, into which hee falleth by such attempt, and then *Præmunire* is barbarously written for *Præmoneri*, *Præmuniri*, (as some men haue held opinion) I will not define: the effect is as I haue declared: and the Law was

first

firſt made in King *Richard* the ſeconds time, & is the remedy which is uſed when the ſpirituall juriſdiction will goe about to encroach any thing upon the Temporall Courts. Becauſe this Court or forme which is called *Curia Chriſtianitatis*, is yet taken as appeareth for an externe and forraine court, & differeth from the policy and manner of gouernment of the Realme, and is another Court (as appeareth by the Act and Writ of *Præmunire*,) than *Curia Regis aut Regina*: yet at this preſent this Court as well as others, hath her force, power, authoritie, rule, and juriſdiction, from the Royall Maieſtie, and the Crown of England and from no other forraine Potentate or Power vnder God, which being granted (as indeed it is true) it may now appeare by ſome reaſon that the firſt Statute of *Præmunire*, whereof I haue ſpoken, hath now no place in England, ſeeing there is no pleading *alibi quàm in Curia Regis ac Regina.*

I haue declared ſummarily as it were in a Chart or Map, or as *Ariſtotle* termeth it ὡς ἐν τύπῳ the forme and manner of gouernment of England, and the policy thereof, and ſet before your eyes the principall points wherein it doth differ from the policie and gouernment at this time vſed in France, Italy, Spaine, Germany, and all other countries, which doe follow the ciuill law of the Romanes, compiled by *Iuſtinian* into his Pandects and Code, not in that ſort, as *Plato* made his Common-wealth, or *Xenophon* his Kingdome of Perſia, nor as Sir *Thomas Moore* his *Vtopia*, being fained Common-wealthes, ſuch as neuer was nor ſhall be, vaine imaginations, fantaſies of Philoſophers, to occupy the time, and to exercise their wits: but as England ſtandeth, and is gouerned at this day the eight and twenty of March, *Anno* 1565. in the ſeuenth yeere of the Raigne and Adminiſtration thereof by the moſt Religious, vertuous,

tuous, and Noble Queene ELIZABETH, Daughter to King *Henrie* the Eighth, and in the one and fiftieth yeere of mine age, when I was Embassadour for her Maiesty in the Court of France, the Scepter wherof at that time the noble Prince of great hope *Charles Maximilian* did hold, hauing then raigned foure yeeres. So that whether I write true or not, it is easie to be seene with eyes (as a man would say) and felt with hands. Wherefore this being as a profe[illegible] of the Common-wealth truly laid before you, not fained by putting a case: let us compare it with Common-wealths which be at this day in *esse*, or doe remaine described in true Histories, especially in such points wherein the one differeth fom the other, to see who hath taken righter, truer, and more commodious way to gouerne the people as well in warre as in peace. This will be no illiberall occupation for him that is a Philosopher and hath a delight in disputing

ting, nor vnprofitable for him who hath to doe, and hath good will to ſerue the Prince and Common-wealth, in giuing counſaile for the better adminiſtration thereof.

Thomas Smith.

FINIS.

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